

SUBCHAPTER B—TOBACCO

PART 40—MANUFACTURE OF TOBACCO PRODUCTS, CIGARETTE PAPERS AND TUBES, AND PROCESSED TOBACCO

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SOURCE: 26 FR 8174, Aug. 31, 1961, unless otherwise noted. Redesignated at 40 FR 16835,

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Apr. 15, 1975; 54 FR 48839, Nov. 27, 1989, and further redesignated by T.D. ATF-460, 66 FR 39093, July 27, 2001.

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Subpart A—Scope of Regulations

§ 40.1 Manufacture of tobacco products, cigarette papers and tubes, and processed tobacco.

This part contains regulations relating to the manufacture of tobacco products, cigarette papers and tubes, and processed tobacco; the payment by manufacturers of tobacco products and cigarette papers and tubes of internal revenue taxes imposed by 26 U.S.C. chapter 52; and the qualification of and operations by manufacturers of tobacco products, cigarette papers and tubes, and processed tobacco.

[T.D. TTB-78, at 74 FR 29408, June 22, 2009]

§ 40.2 Territorial extent.

The provisions of the regulations in this part shall apply in the several States of the United States and the District of Columbia.

Subpart B—Definitions

§ 40.11 Meaning of terms.

When used in this part and in forms prescribed under this part, the following terms shall have the meanings given in this section, unless the context clearly indicates otherwise. Words in the plural form shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine. The terms “includes” and “including” do not exclude things not listed which are in the same general class.

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.40, Delegation of the Administrator’s Authori-

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ties in 27 CFR Part 40, Manufacture of Tobacco Products and Cigarette Papers and Tubes.

Bank. Any commercial bank.

Banking day. Any day during which a bank is open to the public for carrying on substantially all its banking functions.

CFR. The Code of Federal Regulations.

Chewing tobacco. Any leaf tobacco that is not intended to be smoked.

Cigar. Any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of paragraph (2) of the definition for cigarette).

Cigarette. (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco, and

(2) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1) of this definition.

Cigarette paper. Paper, or any other material except tobacco, prepared for use as a cigarette wrapper.

Cigarette tube. Cigarette paper made into a hollow cylinder for use in making cigarettes.

Commercial bank. A bank, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The “FRCS” or “Fedwire” is a communications network that allows Federal Reserve System member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank in New York.

Determine. To establish enough information about taxable products at the time of removal to calculate the tax, specifically the quantity (pounds or number) and kind (for example, cigarettes, snuff, paper tubes). Where the tax rate depends on additional information (such as number of cigarette papers to a set before January 1, 2000 or sale price of large cigars), that information must also be established as part of tax determination.

Director of the service center. The Director, Internal Revenue Service Center, in any of the Internal Revenue regions.

District director. A district director of internal revenue.

Electronic fund transfer or EFT. Any transfer of funds effected by a manufacturer's commercial bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

Export warehouse. A bonded internal revenue warehouse for the storage of tobacco products or cigarette papers or tubes or any processed tobacco, upon which the internal revenue tax has not been paid for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

Export warehouse proprietor. Any person who operates an export warehouse.

Factory. The premises of a manufacturer of tobacco products or processed tobacco as described in his permit issued under 26 U.S.C. chapter 52, or the premises of a manufacturer of cigarette papers and tubes on which such business is conducted.

Fiscal year. The period which begins October 1 and ends on the following September 30.

In bond. The status of tobacco products and cigarette papers and tubes, which come within the coverage of a bond securing the payment of internal revenue taxes imposed by 26 U.S.C. 5701 or 7652, and in respect to which such taxes have not been determined as provided by regulations in this chapter, including (a) such articles in a factory, (b) such articles removed, transferred, or released, pursuant to 26 U.S.C. 5704, and with respect to which relief from the tax liability has not occurred, and (c) such articles on which the tax has been determined, or with respect to which relief from the tax liability has occurred, which have been returned to the coverage of a bond.

Large cigarettes. Cigarettes weighing more than three pounds per thousand.

Large cigars. Cigars weighing more than three pounds per thousand.

Manufacturer of cigarette papers and tubes. Any person who manufactures cigarette paper, or makes up cigarette paper into tubes, except for his own personal use or consumption.

Manufacturer of processed tobacco. Any person who processes any tobacco other than tobacco products.

Manufacturer of tobacco products. (1) Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco, other than:

(i) A person who produces tobacco products solely for that person's own consumption or use; or

(ii) A proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse.

(2) The term "Manufacturer of tobacco products" includes any person who for commercial purposes makes available for consumer use (including such consumer's personal consumption or use under paragraph (1)(i) of this definition) a machine capable of making cigarettes, cigars, or other tobacco products. A person making such a machine available for consumer use shall be deemed the person making the removal with respect to any tobacco products manufactured by such machine. A person who sells a machine directly to a consumer at retail for a consumer's personal home use is not making a machine available for commercial purposes if such machine is not used at a retail premises and is designed to produce tobacco products only in personal use quantities.

Package. The immediate container in which tobacco products, processed tobacco, or cigarette papers or tubes are put up by the manufacturer and offered for sale or delivery to the ultimate consumer. For purposes of this definition, a container of processed tobacco, the contents of which weigh 10 pounds or less (including any added non-tobacco ingredients or constituents), that is removed within the meaning of this part, for any purpose other than destruction, export, delivery as a sample to a manufacturer of processed tobacco or tobacco products for the purpose of soliciting orders of processed tobacco, or scientific testing or testing

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of equipment which results in the destruction of the processed tobacco or the return of the processed tobacco to the factory premises, is deemed to be a package offered for sale or delivery to the ultimate consumer. For appropriate tax rate, see § 40.25a.

Packaging. When used in the context of an action, the act of placing processed tobacco or a tobacco product in a package.

Permit number. The identifying number and/or letters that are assigned to a TTB permit by the appropriate TTB officer.

Person. An individual, partnership, association, company, corporation, estate, or trust.

Pipe tobacco. Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

Processed tobacco. Processed tobacco is any tobacco that has undergone processing, but does not include tobacco products. For purposes of this definition, the processing of tobacco does not include the farming or growing of tobacco or the handling of tobacco solely for sale, shipment, or delivery to a manufacturer of tobacco products or processed tobacco, nor does the processing of tobacco include curing, baling, or packaging activities. For purposes of this definition, the processing of tobacco includes, but is not limited to, stemming (that is, removing the stem from the tobacco leaf), fermenting, threshing, cutting, or flavoring the tobacco, or otherwise combining the tobacco with non-tobacco ingredients.

Removal or remove. The removal of tobacco products or cigarette papers or tubes, or any processed tobacco from the factory or release from customs custody, including the smuggling of other unlawful importation of such articles into the United States.

Roll-your-own tobacco. Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes or cigars, or for use as wrappers of cigars or cigarettes.

Sale price. The price for which large cigars are sold by the U.S. manufacturer, determined in accordance with § 40.22 and used for computation of the tax.

Service center. An Internal Revenue Service Center in any of the Internal Revenue regions.

Service center director. A director of an internal revenue service center.

Sets. Any collection, grouping, or packaging of cigarette papers made up by any person for delivery to the consumer as a unit.

Small cigarettes. Cigarettes weighing not more than three pounds per thousand.

Small cigars. Cigars weighing not more than three pounds per thousand.

Smokeless tobacco. Any snuff or chewing tobacco.

Snuff. Any finely cut, ground, or powdered tobacco that is not intended to be smoked.

Special tax. The special (occupational) tax on manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors, imposed by 26 U.S.C. 5731.

This chapter. Title 27, Code of Federal Regulations, chapter I (27 CFR chapter I).

Tobacco products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

Treasury Account. The Department of the Treasury's General Account at the Federal Reserve Bank of New York.

TTB. The Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury

U.S.C. The United States Code.

(26 U.S.C. 7805 (68A Stat. 917), 27 U.S.C. 205 (49 Stat. 981 as amended), (82 Stat. 959), and Sec. 38, Arms Export Control Act (90 Stat. 744) Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6301); June 29, 1956, ch. 462, 70 Stat. 391 (26 U.S.C. 6301))

[T.D. ATF-48, 43 FR 13553, Mar. 31, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 40.11, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

EFFECTIVE DATE NOTE: At 78 FR 38567, June 27, 2013, § 40.11 was amended by revising the

definition of “Manufacturer of tobacco products”, effective Aug. 26, 2013 through Aug. 26, 2016.

Subpart C—Taxes

§ 40.21 Cigar tax rates.

(a) Cigars are taxed at the following rates under 26 U.S.C. 5701(a):

Type and amount	Tax rate for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Small cigars per thousand	\$1.828	\$50.33
Large cigars*		
• percentage of sale price.	20.719%	52.750%
• but not to exceed—	\$48.75 per thousand.	\$0.4026 per cigar.

*For large cigars: Until March 31, 2009, the percentage tax rate applies when the sale price is \$235.294 per thousand or less, and the flat tax rate applies when the sale price is more than \$235.294 per thousand. On and after April 1, 2009, the percentage tax rate applies when the sale price is \$763.222 or less per thousand cigars, and the flat tax rate applies when the sale price is more than \$763.222 per thousand cigars.

(b) See § 40.22 of this part for rules concerning determination of sale price of large cigars.

(c) Cigars not exempt from tax under 26 U.S.C. chapter 52 and the provisions of this part which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

[T.D. ATF-420, 64 FR 71939, Dec. 22, 1999, as amended by T.D. TTB-75, 74 FR 14481, Mar. 31, 2009]

§ 40.22 Determination of sale price of large cigars.

(a) *General rule.* The tax imposed on large cigars is computed based on the sale price (the price for which the large cigars are sold by the manufacturer). In addition to money, goods or services exchanged for cigars may be considered as part of the sale price.

(b) *Special cases—(1) In general.* If there is any question concerning the applicable sale price for tax purposes, the appropriate TTB officer will determine such price, applying rules similar to the constructive sale price rules in 26 U.S.C. 4216(b) and the implementing regulations in 26 CFR 48.4216(b)-1 through 48.4216(b)-4. These constructive sale price rules apply to cigars sold by a manufacturer at retail, sold on consignment, or sold (otherwise than through an arm’s length trans-

action) at less than the fair market price. Sales of cigars between affiliated corporations may be analyzed under the constructive sale price rules. The appropriate TTB officer may make this analysis on his or her own initiative or upon the written request of a manufacturer. If TTB decides it is necessary, we will publish constructive sale price determinations in the TTB Bulletin in accordance with § 70.701(d) of this chapter.

(2) *Adjustments in sale price—(i) Reasons for adjustment.* Adjustments to the sale price may occur as a result of a discount or price increase by the manufacturer or as a result of a TTB determination pursuant to paragraph (b)(1) above. In either case, the manufacturer must make conforming changes to the tax that was computed on the sale price before the adjustment.

(ii) *Time of adjustment.* If an adjustment is made before the end of the same tax return period as the original determination of the tax, the adjustment may be made on the same return. If the price is increased or decreased retroactively (during a later return period), either by the manufacturer or by TTB’s determination, the manufacturer must make an adjustment on the tax return for the current return period in which the price change was determined.

(iii) *Amount of adjustment.* The taxpayer must compute the adjustment to the tax as the difference between the tax that was paid and the tax that should have been paid, based on the newly determined sale price, together with interest thereon and any applicable penalties. The interest must be computed from the time of payment of the original tax until the time the adjustment was made. Upon request, the appropriate TTB officer will provide information regarding interest rates applicable to specific time periods and any applicable penalties.

(3) *Pricing for different packaging.* If different bona fide sale prices are applicable to different types of packaging (e. g., boxes of 25 and boxes of 50), then the cigars in each type of packaging are taxed on the basis of their respective sale prices.

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(4) *Pricing of seconds.* If some of an otherwise identical cigar brand and size:

(i) Are distinctive from other such cigars because of physical imperfections, (ii) Are offered to the consumer through clear labeling as “imperfects”, “seconds”, “throw-outs”, or a comparable commonly understood term, and

(iii) The manufacturer has a separate sale price for such cigars, then they are taxed on the basis of this separate sale price.

(5) *Combination packages.* If a manufacturer has a sale price for a combination package containing cigars of different sizes, the cigars are taxed based on that combination sale price. If there is no sale price for the combination, then the cigars are taxed based on their individual sale prices.

(6) *Removals for another person.* If a manufacturer makes taxable removals of a brand and size of cigar only for distribution by others who establish the sale price, the tax is based on such sale price even though the manufacturer who makes the removals does not establish the price.

[T.D. ATF-420, 64 FR 71939, Dec. 22, 1999, as amended by T.D. TTB-91, 76 FR 5479, Feb. 1, 2011]

§ 40.23 Cigarette tax rates.

Cigarettes are taxed at the following rates under 26 U.S.C. 5701(b):

Product	Tax rate per thousand for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Small cigarettes	\$19.50	\$50.33
Large cigarettes up to 6½" long.	\$40.95	\$105.69
Large cigarettes over 6½" long.	Taxed at the rate for small cigarettes, counting each 2¾" or fraction thereof of the length of each as one cigarette.	

[T.D. TTB-75, 74 FR 14482, Mar. 31, 2009]

§ 40.24 Classification of cigarettes.

For tax purposes, small cigarettes are designated Class A and large cigarettes are designated Class B.

(72 Stat. 1414; 26 U.S.C. 5701)

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§ 40.25 Smokeless tobacco tax rates.

Smokeless tobacco products are taxed at the following rates under 26 U.S.C. 5701(e):

Product	Tax rate per pound* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Snuff	\$ 0.585	\$ 1.51
Chewing tobacco	\$ 0.195	\$ 0.5033

* Prorate tax for fractions of a pound.

[T.D. TTB-75, 74 FR 14482, Mar. 31, 2009]

§ 40.25a Pipe tobacco and roll-your-own tobacco tax rates and classification.

(a) *Tax rates.* Pipe tobacco and roll-your-own tobacco are taxed at the following rates under 26 U.S.C. 5701(f) and (g), respectively:

Product	Tax rate per pound* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Pipe tobacco	\$ 1.0969	\$ 2.8311
Roll-your-own tobacco	\$ 1.0969	\$ 24.78

* Prorate tax for fractions of a pound.

(b) *Classification.* (1) Pipe tobacco and roll-your-own tobacco, before removal subject to tax, must be put up in packages that conform to the requirements of §§ 40.211 and 40.212, and of § 40.216a or § 40.216b as appropriate.

(2) Any tobacco that has been processed and that is removed in a package, as that term is defined in § 40.11, that does not bear the notice for smokeless tobacco prescribed in § 40.216 or the notice for pipe tobacco prescribed in § 40.216a is deemed to be roll-your-own tobacco and subject to tax at the rate applicable to roll-your-own tobacco. A container of processed tobacco, the contents of which weigh 10 pounds or less (including any added non-tobacco ingredients or constituents), that is removed within the meaning of this part for any purpose other than destruction, export, delivery as a sample to a manufacturer of processed tobacco or tobacco products for the purpose of soliciting orders of processed tobacco, or scientific testing or testing of equipment which results in the destruction of the processed tobacco or the return of the processed tobacco to the factory

premises, is deemed to be a package offered for sale or delivery to the ultimate consumer.

(3) Subject to paragraph (b)(4) of this section, any tobacco that has been processed and that is removed in a package, as that term is defined in § 40.11, is deemed to be roll-your-own tobacco and subject to tax at the rate applicable to roll-your-own tobacco, even though the package bears the notice required for pipe tobacco under § 40.216a, if:

(i) The package does not bear the declaration "pipe tobacco" in direct conjunction with, parallel to, and in substantially the same conspicuousness of type and background as the brand name each time the brand name appears on the package; or

(ii) The package or accompanying materials bear any representation that would suggest a use other than as pipe tobacco. (26 U.S.C. 5702 and 5723) The term 'accompanying materials' includes, but is not limited to, any point of sale advertising or other printed product communications issued by the manufacturer or importer of pipe tobacco products. In addition, the inclusion of cigarette papers or tubes in a package bearing a 'pipe tobacco' declaration will suggest a use other than pipe tobacco.

(4) During the period from June 22, 2009, through March 23, 2010, manufacturers may continue to remove products as pipe tobacco in packages that do not bear the declaration "pipe tobacco" in the manner prescribed in paragraph (b)(3)(i) of this section.

[T.D. TTB-75, 74 FR 14482, Mar. 31, 2009, as amended by T.D. TTB-78, 74 FR 29408, June 22, 2009; T.D. TTB-81, 74 FR 48653, Sept. 24, 2009; T.D. TTB-104, 77 FR 37302, June 21, 2012]

§ 40.26 Persons liable for tax.

The manufacturer of tobacco products shall be liable for the taxes imposed on tobacco products by 26 U.S.C. 5701: *Provided*, That when tobacco products are transferred in bond pursuant to 26 U.S.C. 5704, to the bonded premises of another such manufacturer or an export warehouse proprietor, the transferee shall become liable for the tax upon receipt by him of such products and the transferor shall thereupon be relieved of his liability for the tax.

When tobacco products are released in bond from customs custody for transfer to the bonded premises of a manufacturer of tobacco products, the transferee shall become liable for the tax on such products upon release from customs custody. Any person who possesses tobacco products in violation of 26 U.S.C. 5751(a)(1) or (2), shall be liable for a tax equal to the tax on such products.

(Sec. 201, Pub. L. 85-859, 72 Stat 1415, as amended, 1424, as amended (26 U.S.C. 5703, 5751))

[T.D. 6871, 31 FR 32, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55854, Sept. 28, 1979; T.D. ATF-232, 51 FR 28080, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986]

§ 40.27 Assessment.

Whenever any person required by law to pay tax on tobacco products fails to pay such tax, the tax shall be ascertained and assessed against such person, subject to the limitations prescribed in 26 U.S.C. 6501. The tax so assessed shall be in addition to the penalties imposed by law for failure to pay such tax when required. Except in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error, no such assessment shall be made until and after notice has been afforded such person to show cause against assessment. The person will be allowed 45 days from the date of such notice to show cause, in writing, against such assessment.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1415, as amended (26 U.S.C. 5703))

[T.D. 6871, 31 FR 32, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55854, Sept. 28, 1979; T.D. ATF-232, 51 FR 28080, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986]

Subpart Ca—Special (Occupational) Taxes

SOURCE: T.D. ATF-271, 53 FR 17560, May 17, 1988, unless otherwise noted.

§ 40.31 Liability for special tax.

(a) *Manufacturer of tobacco products.* Every manufacturer of tobacco products shall pay a special (occupational)

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tax at a rate specified by § 40.32 of the part. The tax shall be paid on or before the date of commencing the business of manufacturing tobacco products, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) [Reserved]

(c) *Each place of business taxable.* A manufacturer of tobacco products incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(d) *Payment of tax.* Special tax must be paid by return. The prescribed return is TTB Form 5630.5t, Special Tax Registration and Return—Tobacco. Special tax returns, with payment of tax, must be filed with TTB in accordance with the instructions on the form and the requirements of subpart D of part 46 of this chapter.

(26 U.S.C. 5731, 5733)

[T.D. ATF-271, 53 FR 17560, May 17, 1988, as amended by T.D. TTB-79, 74 FR 37419, July 28, 2009]

§ 40.32 Rates of special tax.

(a) *General.* Title 26 U.S.C. 5731(a)(1) imposes a special tax of \$1,000 per year on every manufacturer of tobacco products.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5731(b) provides for a reduced rate of \$500 per year with respect to any manufacturer of tobacco products whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 40.31 relates) are less than \$500,000. The “taxable year” to be used for determining gross receipts is the taxpayer’s income tax year. All gross receipts of the taxpayer shall be included, not just the

gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a “controlled group”; in that case, the rules of paragraph (c) of this section shall apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. “Controlled group” means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words “at least 80 percent” shall be replaced by the words “more than 50 percent” in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a “controlled group of corporations” apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5731)

§ 40.33 Cross reference.

For additional rules pertaining to liability for special tax, filing special tax returns, issuance and examination of special (occupational) tax stamps, and notification of changes to special

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tax stamps, see subpart D of part 46 of this chapter.

[T.D. TTB-79, 74 FR 37419, July 28, 2009]

§§ 40.34–40.36 [Reserved]

Subpart D—Administrative Provisions

§ 40.41 Forms prescribed.

(a) The appropriate TTB officer is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part. When a return, form, claim, or other document called for under this part is required by this part, or by the document itself, to be executed under penalties of perjury, it shall be executed under penalties of perjury.

(b) Forms prescribed by this part are available for printing through the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

(5 U.S.C. 552(a) (80 Stat. 383, as amended))

[T.D. ATF-92, 46 FR 46921, Sept. 23, 1981, as amended by T.D. ATF-232, 51 FR 28080, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986; T.D. ATF-372, 61 FR 20725, May 8, 1996; T.D. TTB-44, 71 FR 16949, Apr. 4, 2006]

§ 40.42 Authority of Appropriate TTB officers to enter premises.

Any appropriate TTB officer may enter in the daytime any premises where tobacco products are produced or kept, so far as it may be necessary for the purpose of examining such products. When such premises are open at night, any appropriate TTB officer may enter them, while so open, in the performance of his official duties. The owner of such premises, or person having the superintendence of the same, who refuses to admit any appropriate TTB officer or permit him to examine such products shall be liable to the

penalties prescribed by law for the offense.

(68A Stat. 872, 903; 26 U.S.C. 7342, 7606)

[T.D. 6871, 31 FR 33, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF-232, 51 FR 28080, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986; T.D. TTB-91, 76 FR 5479, Feb. 1, 2011]

§ 40.43 Interference with administration.

Whoever, corruptly or by force or threats of force, endeavors to hinder or obstruct the administration of this part, or endeavors to intimidate or impede any TTB officer acting in his official capacity, or forcibly rescues or attempts to rescue or causes to be rescued any property, after it has been duly seized for forfeiture to the United States in connection with a violation of the internal revenue laws, shall be liable to the penalties prescribed by law.

(68A Stat. 855; 26 U.S.C. 7212)

§ 40.44 Disposal of forfeited, condemned, and abandoned tobacco products.

A Federal, State, or local officer shall not sell or cause to be sold for consumption in the United States any forfeited, condemned, or abandoned tobacco products in his custody upon which the Federal tax has not been paid, if in his opinion the sale thereof will not bring a price equal to the tax due and payable thereon and the expenses incident to the sale thereof. Where the products are not sold the officer may deliver them to a Federal or State hospital or institution (if they are fit for consumption) or cause their destruction by burning completely or by rendering them unfit for consumption. Where such products are sold they shall be released by the officer having custody thereof only after they are properly packaged and taxpaid. A receipt from the appropriate TTB officer evidencing payment of tax on such products shall be presented to the officer having custody of the products, which tax shall be considered part of the sales price. Where tobacco products which have been packaged under the provisions of part 44 or part 45 of this

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chapter are to be released after payment of tax, the purchaser shall appropriately mark each package "Federal Tax Paid (date)" before the officer having custody of the products releases them:

Provided, That if the purchaser is a qualified manufacturer of tobacco products, or for products packaged under part 44 a qualified export warehouse proprietor, the products may be released without such marking of the packages if the manufacturer or proprietor does not intend to place such products on the domestic market for taxable products but will dispose of them otherwise, such as by destruction or return to bond through claim for refund, and files a written statement to that effect, in original only, with the officer having custody of the products. In the case of products forfeited under the internal revenue laws the sale shall be subject to the provisions of part 172 of this chapter.

(68A Stat. 870, as amended, 72 Stat. 1425, as amended; 26 U.S.C. 7325, 5753)

[T.D. 6961, 33 FR 9488, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28080, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19339, May 22, 1987; T.D. ATF-469, 66 FR 56758, Nov. 13, 2001]

§ 40.45 Alternate methods or procedures.

A manufacturer of tobacco products, on specific approval by the appropriate TTB officer as provided in this section, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The appropriate TTB officer may approve an alternate method or procedure, subject to stated conditions, when he finds that—

(a) Good cause has been shown for the use of the alternate method or procedure,

(b) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and affords equivalent security to the revenue, and

(c) The alternate method or procedure will not be contrary to any provision of law, and will not result in an increase in cost to the Government or

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hinder the effective administration of this part.

No alternate method or procedure relating to the giving of any bond or to the assessment, payment, or collection of tax, shall be authorized under this section. Where a manufacturer desires to employ an alternate method or procedure, he shall submit a written application to do so, in triplicate, to the appropriate TTB officer. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the appropriate TTB officer. The manufacturer shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever in the judgment of the appropriate TTB officer the revenue is jeopardized or the effective administration of this part is hindered. The manufacturer shall retain, as part of his records, any authorization of the appropriate TTB officer under this section.

§ 40.46 Emergency variations from requirements.

The appropriate TTB officer may approve methods of operation other than as specified in this part, where he finds that an emergency exists and the proposed variations from the specified requirements are necessary, and the proposed variations—

(a) Will afford the security and protection to the revenue intended by the prescribed specifications.

(b) Will not hinder the effective administration of this part, and

(c) Will not be contrary to any provision of law.

Variations from requirements granted under this section are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions, and limitations shall automatically terminate the authority for such variations and the manufacturer thereupon shall fully comply with the prescribed requirements of

regulations from which the variations were authorized. Authority for any variations may be withdrawn whenever in the judgment of the appropriate TTB officer the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such variation. Where a manufacturer desires to employ such variation, he shall submit a written application to do so, in triplicate, to the appropriate TTB officer. The application shall describe the proposed variations and set forth the reasons therefor. Variations shall not be employed until the application has been approved. The manufacturer shall retain, as part of his records, any authorization of the appropriate TTB officer under this section.

§ 40.47 Other businesses within factory.

(a) *General.* The appropriate TTB officer may authorize such other businesses within the factory of a manufacturer of tobacco products as he finds will not jeopardize the revenue, will not hinder the effective administration of this part, and will not be contrary to law. A manufacturer of tobacco products who wishes to engage in another business within the factory must submit a written application to do so to the appropriate TTB officer. Except as otherwise provided in paragraph (b) of this section, a manufacturer of tobacco products may not engage in such other business until the application is approved by the appropriate TTB officer. The manufacturer must retain as part of its records any authorization provided under this section.

(b) *Processed tobacco.* A manufacturer of tobacco products may engage in certain activities related to processed tobacco without an approval under paragraph (a) of this section. Section 40.72(b) specifies the activities and circumstances that do not require authorization to engage in another business as well as those activities and circumstances that do.

[T.D. TTB-78, 74 FR 29408, June 22, 2009, as amended by T.D. TTB-104, 77 FR 37302, June 21, 2012]

§ 40.48 Penalties and forfeitures.

Anyone who fails to comply with the provisions of this part becomes liable to the civil and criminal penalties, and forfeitures, provided by law.

(72 Stat. 1425, 1426; 26 U.S.C. 5761, 5762, 5763)

§ 40.49 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.40, Delegation of the Administrator's Authorities in 27 CFR Part 40, Manufacture of Tobacco Products and Cigarette Papers and Tubes. You may obtain a copy of this order by accessing the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

[T.D. TTB-44, 71 FR 16949, Apr. 4, 2006]

Subpart E—Qualification Requirements for Manufacturers of Tobacco Products

§ 40.61 Qualification.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, every person who manufactures tobacco products must qualify for, and obtain, a permit as a manufacturer of tobacco products in accordance with the provisions of this part.

(b) *Exceptions.* The following persons are not considered to be engaged in the business of manufacturing tobacco products for purposes of this part:

(1) A person who produces tobacco products solely for that person's own consumption or use;

(2) A proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse;

(3) A retailer of tobacco products, such as a tobacconist, who takes tax-paid tobacco products out of the package, as that term is defined in § 40.11, in front of waiting customers and places the tobacco products into a different container for immediate delivery to those customers; or

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(4) A person whose operations are limited to, and who holds a permit as, a manufacturer of processed tobacco.

(c) *Minimum manufacturing and activity requirements.* A permit to manufacture tobacco products will only be granted to those persons whose principal business activity under such permit will be the manufacture of tobacco products. A permit will not be granted to any person whose principal business activity under such permit will be to receive or transfer tobacco products in bond. As a minimum activity requirement, in order to qualify for a permit, the quantity of tobacco products manufactured under the permit must be equivalent to, or exceed, the quantity to be transferred or received in bond under the permit. For the purposes of this section, the activity of packaging processed tobacco may be sufficient to qualify as a manufacturing activity.

[T.D. TTB-78, 74 FR 29409, June 22, 2009]

§ 40.61a Transitional rule.

Any person who:

(a) On August 5, 1997, was engaged in business as a manufacturer of roll-your-own tobacco, and

(b) Before January 1, 2000, submits an application, as provided in this part, to engage in such business, may, continue to engage in such business pending final action on such application. Pending such final action, all provisions of chapter 52 of the Internal Revenue Code of 1986 shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit to manufacture roll-your-own tobacco under such chapter 52.

[T.D. ATF-424, 64 FR 71931, Dec. 22, 1999]

§ 40.62 Application for permit.

Every person, before commencing business as a manufacturer of tobacco products as defined in § 40.11, shall make application for, and obtain, the permit provided in § 40.75, covering operations at each proposed factory. Such application shall be made on TTB F 5200.3, in duplicate, to the appropriate TTB officer. All documents required under this part to be furnished with such application shall be made a part thereof. Where the applicant for a per-

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mit under this section holds a permit or permits authorizing the production of any tobacco products at premises to be covered by the permit applied for, the applicant shall surrender such permit or permits for cancellation, upon the issuance of the permit applied for.

(72 Stat. 1421; 26 U.S.C 5712)

§ 40.63 Corporate documents.

Every corporation, before commencing business as a manufacturer of tobacco products, shall furnish with its application for permit, required by § 40.62, a true copy of the corporate charter or a certificate of corporate existence or incorporation executed by the appropriate officer of the State in which incorporated. The corporation shall likewise furnish duly authenticated extracts of the stockholders' meetings, bylaws, or directors' meetings, listing the offices the incumbents of which are authorized to sign documents or otherwise act in behalf of the corporation in matters relating to 26 U.S.C. chapter 52, and regulations issued thereunder. The corporation shall also furnish evidence, in duplicate, of the identity of the officers and directors and each person who holds more than ten percent of the stock of such corporation. Where any of the information required by this section has previously been filed with the appropriate TTB officer and such information is currently complete and accurate, a written statement to that effect, in duplicate, will be sufficient for the purpose of this section.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1421, as amended (26 U.S.C. 5712))

[T.D. 6840, 30 FR 9310, July 27, 1965. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55854, Sept. 28, 1979]

§ 40.64 Articles of partnership or association.

Every partnership or association, before commencing business as a manufacturer of tobacco products, shall furnish with its application for permit, required by § 40.62, a true copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county, or municipality.

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Where a partnership or association has previously filed such documents with the appropriate TTB officer and such documents are currently complete and accurate, a written statement, in duplicate, to that effect by the partnership or association will be sufficient for the purpose of this section.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 40.65 Trade name certificate.

Every person, before commencing business under a trade name as a manufacturer of tobacco products, shall furnish with his application for permit, required by § 40.62, a true copy of the certificate or other document, if any, issued by a State, county, or municipal authority in connection with the transaction of business under such trade name. If no such certificate or other document is so required, a written statement, in duplicate, to that effect by such person will be sufficient for the purpose of this section.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 40.66 Bond.

Every person, before commencing business as a manufacturer of tobacco products, shall file, in connection with his application for permit, a bond on TTB F 5200.25 or 5200.26, in duplicate, in accordance with the applicable provisions of subpart G of this part, conditioned upon compliance with the provisions of chapter 52, I.R.C., and regulations thereunder, including, but not limited to, the timely payment of taxes imposed by such chapter and penalties and interest in connection therewith for which he may become liable to the United States: *Provided*, That any person who, on the effective date of this part, October 1, 1961, has on file a valid and adequate bond, Form 2100, "Bond—Manufacturer of Cigars and Cigarettes," may continue, under such bond, the operations with respect to the permit to which that bond relates, in accordance with the provisions of this part.

(72 Stat. 1421, as amended; 26 U.S.C. 5711)

[T.D. 6871, 31 FR 33, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 40.67 Blanket bond.

Where a manufacturer of tobacco products operates more than one factory he may, in lieu of filing separate bonds, file a blanket bond on TTB F 5200.25 or 5200.26, in duplicate, in accordance with the provisions of § 40.134, for any or all of the factories. The total amount of any blanket bond given under this section shall be available for the satisfaction of any liability incurred at any factory covered by the bond.

(72 Stat. 1421; 26 U.S.C. 5711)

[26 FR 8174, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975; 54 FR 48839, Nov. 27, 1989, and further redesignated by T.D. ATF-460, 66 FR 39093, July 27, 2001, as amended by T.D. TTB-91, 76 FR 5480, Feb. 1, 2011]

§ 40.68 Power of attorney.

If the application for permit or any report, return, notice, schedule, or other document required to be executed is to be signed by an individual (including one of the partners for a partnership or one of the members of an association) as an attorney in fact for any person, or if an individual is to otherwise officially represent such person, power of attorney on TTB F 5000.8 shall be furnished to the appropriate TTB officer. (For power of attorney in connection with conference and practice requirements see 26 CFR 601.501 through 601.527.) Such power of attorney is not required for persons whose authority is furnished with the corporate documents as required by § 40.63. TTB F 5000.8 does not have to be filed again with a appropriate TTB officer where such form has previously been submitted to that appropriate TTB officer and is still in effect.

[T.D. 6840, 30 FR 9310, July 27, 1965. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. TTB-91, 76 FR 5480, Feb. 1, 2011]

§ 40.69 Factory premises.

The premises to be used by a manufacturer of tobacco products as his factory may consist of more than one building, or portions of buildings, which need not be contiguous but must be located in the same city, town, or village: Except that, where the appropriate TTB officer determines that a building or portion of a building which

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is not within the city, town, or village, is so conveniently and closely situated to the general factory premises as to present no jeopardy to the revenue and as to offer no hindrance to the administration of this part, he may authorize the inclusion of such building or portion of building as part of the factory. The buildings or portions of buildings shall be described in the application for permit and the bond by number, street, and city, town, or village, and State. If any of the following conditions exist a diagram shall also be furnished, in duplicate, showing the information indicated:

(a) Where the factory is in more than one building, and each building is not identifiable by a separate street address—identify each building by a letter, number, or similar designation;

(b) Where the factory consists of a portion of a building or where portions of buildings are part of the factory—show the particular floor or floors, or room or rooms, comprising the factory;

(c) Where there is an adjoining retail store operated by the manufacturer of tobacco products including any doors or other openings between the premises.

(72 Stat. 1421; 26 U.S.C. 5712)

[T.D. 6840, 30 FR 9310, July 27, 1965, as amended by T.D. 6871, 31 FR 33, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-232, 51 FR 28080, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986]

§ 40.70 Separation of and access to factory.

Where the factory consists of a portion of a building, or where portions of buildings are part of the factory, the factory shall be completely separated by walls from adjoining portions of the building. Such walls shall be securely constructed of substantial materials. The appropriate TTB officer may, wherever he finds that the revenue will not be jeopardized, authorize openings and doors in such walls or means of separation other than walls if such means adequately delineate the factory. The factory shall be accessible directly from a street, yard, common passageway, or other common means of entrance.

(72 Stat. 1421; 26 U.S.C. 5712)

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§ 40.71 Factories established prior to October 1, 1961.

Factories established prior to the effective date of this part, October 1, 1961, shall not be subject to the provisions of § 40.70 if, in the opinion of the appropriate TTB officer, the existing premises afford adequate protection to the revenue.

(72 Stat. 1421; 26 U.S.C. 5712)

[T.D. 6871, 31 FR 33, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 40.72 Use of factory premises.

(a) *General.* Unless otherwise authorized by the appropriate TTB officer as provided in § 40.47, the premises used by a manufacturer of tobacco products for his factory shall be used exclusively for the purposes of manufacturing and storing tobacco products; storing materials, equipment, and supplies related thereto or used or useful in the conduct of the business; and carrying on activities in connection with business of the manufacturer of tobacco products.

(b) *Processed tobacco.* (1) A manufacturer of tobacco products that processes tobacco or receives processed tobacco on its factory premises solely for use in the manufacture of tobacco products under its permit, that removes processed tobacco from the factory premises only for purposes related to its business of manufacturing tobacco products as set forth in (b)(2) of this section, and that maintains records sufficient to show the final disposition of any processed tobacco removed from the factory premises may engage in such activities on the factory premises under the authority of its existing permit without prior authorization from TTB under § 40.47. If a manufacturer of tobacco products removes processed tobacco for purposes other than those specified in paragraph (b)(2) of this section, that manufacturer must obtain prior authorization from TTB in accordance with § 40.47 and must keep records and submit reports as prescribed in §§ 40.521 and 40.522.

(2) The following activities are considered to be activities related to the manufacture of tobacco products: Removal of samples of processed tobacco for the purpose of soliciting orders of tobacco products; removal of processed

tobacco for destruction; removal of processed tobacco for scientific testing or testing of equipment which results in the destruction of the processed tobacco or the return of the processed tobacco to the factory premises; and transfer of processed tobacco between permitted premises of the same manufacturer. Any removal of processed tobacco other than those listed above requires the manufacturer to first obtain authorization to engage in another business within the factory under § 40.47 and to keep records and submit reports under §§ 40.521 and 40.522, unless the manufacturer can show to the satisfaction of the appropriate TTB officer that the removal is connected with the business of a manufacturer of tobacco products rather than with the business of a manufacturer of processed tobacco.

[T.D. TTB-78, 74 FR 29409, June 22, 2009, as amended by T.D. TTB-104, 77 FR 37302, June 21, 2012]

§ 40.73 Additional information.

The appropriate TTB officer may require such additional information as he may deem necessary to determine whether the applicant is entitled to a permit under the provisions of this part. The applicant shall, when required by the appropriate TTB officer, furnish as a part of his application for such permit such additional information as may be necessary for the appropriate TTB officer to determine whether the applicant is entitled to a permit.

§ 40.74 Investigation of applicant.

(a) *Investigation.* The appropriate TTB officer may cause inquiry or investigation to be made to verify the information furnished in connection with an application for permit and to ascertain whether the applicant is eligible for a permit. Any of the following conditions may be grounds for denial of a permit:

- (1) The premises on which it is proposed to conduct the business are not adequate to protect the revenue;
- (2) The activity proposed to be carried out at such premises does not meet the minimum manufacturing or activity requirements of § 40.61(b); or
- (3) The applicant (including, in the case of a corporation, any officer, di-

rector, or principal stockholder and, in the case of a partnership, a partner)—

(i) Is, by reason of his business experience, financial standing, or trade connections or by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with this chapter;

(ii) Has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes; or

(iii) Has failed to disclose any material information required or made any material false statement in the application therefor.

(b) *TTB action.* The appropriate TTB officer, if there is reason to believe that the applicant is not entitled to a permit, shall promptly give the applicant notice of the contemplated disapproval of the application and opportunity for hearing thereon in accordance with part 71 of this chapter, which part (including the provisions relating to the recommended decision and to appeals) is applicable to such proceedings. If, after such notice and opportunity for hearing, the appropriate TTB officer finds that the applicant is not entitled to a permit, he shall, by order stating the findings on which his decision is based, deny the permit.

(26 U.S.C. 5712)

[T.D. TTB-75, 74 FR 14482, Mar. 31, 2009]

§ 40.75 Issuance of permit.

If the application for permit, together with the bond and supporting documents, required under this part is approved by him, the appropriate TTB officer shall issue a permit on TTB F 5200.10 to the applicant as a manufacturer of tobacco products.

(72 Stat. 1421; 26 U.S.C. 5713)

[T.D. 6871, 31 FR 33, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 40.76 Retention of permit and supporting documents.

The manufacturer shall retain his permit, together with the copy of the application and supporting documents

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returned to him with the permit, at the same place where the records required by this part are kept and they shall be made available for inspection by any appropriate TTB officer upon his request.

(72 Stat. 1421, 1423; 26 U.S.C. 5712, 5713, 5741)

Subpart F—Changes After Original Qualification of Manufacturers of Tobacco Products

CHANGES IN NAME

§ 40.91 Change in individual name.

Where there is a change in the name of an individual operating as a manufacturer of tobacco products he shall, within 30 days of such change, make application on Form 2098 for an amended permit.

(72 Stat. 1421; 26 U.S.C. 5712)

[26 FR 8174, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975; 54 FR 48839, Nov. 27, 1989; and further redesignated by T.D. ATF-460, 66 FR 39093, July 27, 2001, as amended by T.D. TTB-91, 76 FR 5480, Feb. 1, 2011]

§ 40.92 Change in trade name.

Where there is a change in, or an addition or discontinuance of, a trade name used by a manufacturer of tobacco products in connection with operations authorized by his permit the manufacturer shall, within 30 days of such change, addition or discontinuance, make application on TTB F 5200.16 for an amended permit to reflect such change. The manufacturer shall also furnish a true copy of any new trade name certificate or document issued to him, or statement in lieu thereof, required by § 40.65.

(72 Stat. 1421; 26 U.S.C. 5712)

[T.D. 6840, 30 FR 9311, July 27, 1965. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 40.93 Change in corporate name.

Where there is a change in the name of a corporate manufacturer of tobacco products, the manufacturer shall, within 30 days of such change, make application on TTB F 5200.16 for an amended permit. The manufacturer shall also furnish such documents as may be nec-

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essary to establish that the corporate name has been changed.

(72 Stat. 1421; 26 U.S.C. 5712)

CHANGES IN OWNERSHIP AND CONTROL

§ 40.101 Fiduciary successor.

If an administrator, executor, receiver, trustee, assignee, or other fiduciary, is to take over the business of a manufacturer of tobacco products, as a continuing operation, such fiduciary shall, before commencing operations, make application for permit and file bond as required by subpart E, of this part, furnish certified copies, in duplicate, of the order of the court, or other pertinent documents, showing his appointment and qualification as such fiduciary, and make a commencing inventory, in accordance with the provisions of § 40.201: *Provided*, That where a diagram has been furnished by the predecessor, in accordance with the provisions of § 40.69, the successor may adopt such diagram if it is currently complete and accurate. However, where a fiduciary intends only to liquidate the business, qualification as a manufacturer of tobacco products will not be required if he promptly files with the appropriate TTB officer a written statement to that effect, in duplicate, together with an extension of coverage of the predecessor's bond, executed by the fiduciary and the surety on such bond, in accordance with the provisions of § 40.137.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5712, 5721)

§ 40.102 Transfer of ownership.

If a transfer is to be made in ownership of the business of a manufacturer of tobacco products (including a change of any member of a partnership or association), such manufacturer shall give notice, in writing, to the appropriate TTB officer, naming the proposed successor and the desired effective date of such transfer. The proposed successor shall, before commencing operations, qualify as a manufacturer of tobacco products, in accordance with the applicable provisions of subpart E of this part: *Provided*, That where a diagram has been furnished by the manufacturer in accordance with the provisions of § 40.69, the proposed successor

may adopt such diagram if it is currently complete and accurate. The manufacturer shall give such notice of transfer, and the proposed successor shall make application for permit and file bond, as required, in ample time for examination and approval thereof before the desired date of such change. The predecessor shall make a concluding inventory and concluding report, in accordance with the provisions of §§ 40.201 and 40.202, respectively, and surrender his permit with such inventory and report. The successor shall make a commencing inventory and commencing report, in accordance with the provisions of §§ 40.201 and 40.202, respectively.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5712, 5713, 5721, 5722)

§ 40.103 Change in officers, directors, or stockholders of a corporation.

Upon election or appointment (excluding successive reelection or reappointment) of any officer or director of a corporation operating the business of a manufacturer of tobacco products, or upon any occurrence which results in a person acquiring ownership or control of more than ten percent in aggregate of the outstanding stock of such corporation, the manufacturer shall, within 30 days of such action, so notify the appropriate TTB officer in writing, giving the identity of such person. When there is any change in the authority furnished under § 40.63 for officers to act in behalf of the corporation the manufacturer shall immediately so notify the appropriate TTB officer in writing.

(72 Stat. 1421; 26 U.S.C. 5712)

[T.D. 6840, 30 FR 9311, July 27, 1965. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 40.104 Change in control of a corporation.

Where the issuance, sale, or transfer of the stock of a corporation, operating as a manufacturer of tobacco products, results in a change in the identity of the principal stockholders exercising actual or legal control of the operations of the corporation, the corporate manufacturer shall, within 30 days after the change occurs, make application on TTB F 5200.3 for a new per-

mit. Otherwise, the present permit shall be automatically terminated at the expiration of such 30-day period, and the manufacturer shall dispose of all tobacco products on hand, in accordance with this part, make a concluding inventory and concluding report, in accordance with the provisions of §§ 40.201 and 40.202, respectively, and surrender his permit with such inventory and report. If the application for a new permit is timely made, the present permit shall continue in effect pending final action with respect to such application.

(72 Stat. 1421, 1422; 26 U.S.C. 5712, 5713, 5721, 5722)

[T.D. 6871, 31 FR 33, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-232, 51 FR 28081, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

CHANGES IN LOCATION OF FACTORY

§ 40.111 Change in location.

Whenever a manufacturer of tobacco products intends to relocate its factory, the manufacturer shall, before commencing operations at the new location, make application on TTB F 5200.16 for, and obtain, an amended permit. The application shall be supported by bond coverage in accordance with the provisions of subpart G of this part.

[T.D. TTB-91, 76 FR 5479, Feb. 1, 2011]

§ 40.112 Change in address.

Whenever any change occurs in the address, but not the location, of the factory of a manufacturer of tobacco products, as a result of action of local authorities, the manufacturer shall, within 30 days of such change, make application on TTB F 5200.16 for an amended permit.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 40.114 Extension or curtailment of factory.

Where a tobacco products factory is to be changed to an extent which will make inaccurate the description of the factory as set forth in the last application by the manufacturer for permit, on the diagram, if any, furnished with such application, the manufacturer shall first make an application on TTB F 5200.16 for, and obtain, an amended

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permit. Such application shall describe the proposed change in the factory and shall be accompanied by a new diagram if required under the provisions of § 40.69.

(72 Stat. 1421; 26 U.S.C. 5711, 5712)

Subpart G—Bonds and Extensions of Coverage of Bonds

§ 40.131 Corporate surety.

(a) Surety bonds required under the provisions of this part may be given only with corporate sureties holding certificates of authority from the Secretary of the Treasury as acceptable sureties on Federal bonds. Each bond and each extension of coverage of bond shall at the time of filing be accompanied by a power of attorney authorizing the agent or officer who executed the bond to so act on behalf of the surety. The appropriate TTB officer who is authorized to approve the bond may, whenever he deems it necessary, require additional evidence of the authority of the agent or officer to execute the bond or extension of coverage of bond. The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is other than a manually signed document it shall be accompanied by a certificate of its validity. Limitations concerning corporate sureties are prescribed by the Secretary in Treasury Department Circular No. 570, as revised. The surety shall have no interest whatever in the business covered by the bond.

(b) Treasury Department Circular No. 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies) is published in the FEDERAL REGISTER annually as of the first workday in July. As they occur, interim revisions of the circular are published in the FEDERAL REGISTER. Copies may be obtained from the Audit Staff, Bureau of Government

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Financial Operations, Department of the Treasury, Washington, DC 20226.

(61 Stat. 649, 72 Stat. 1421, as amended; 31 U.S.C. 9304, 9306; 26 U.S.C. 5711; 5 U.S.C. 552(a) (80 Stat. 383, as amended))

[T.D. 6961, 33 FR 9488, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-92, 46 FR 46921, Sept. 23, 1981]

§ 40.132 Deposit of securities in lieu of corporate surety.

In lieu of corporate surety the manufacturer of tobacco products may pledge and deposit, as security for his bond, securities which are transferable and are guaranteed as to both interest and principal by the United States, in accordance with the provisions of 31 CFR part 225.

(61 Stat. 650, 72 Stat. 1421; 6 U.S.C. 9301, 9303; 26 U.S.C. 5711)

§ 40.133 Amount of individual bond.

The amount of the bond of a manufacturer of tobacco products shall be not less than the total amount of tax liability on all tobacco products manufactured in his factory, received in bond from other factories and from export warehouses, and released to him in bond from customs custody, during any calendar month. Where the amount of any bond is no longer sufficient and the bond is in less than the maximum amount, the manufacturer shall immediately file a strengthening or superseding bond as required by this subpart. The amount of any such bond (or the total amount including strengthening bonds, if any) need not exceed \$250,000 for a manufacturer producing or receiving cigarettes in bond; need not exceed \$150,000 for a manufacturer producing or receiving cigars, smokeless tobacco, pipe tobacco, or roll-your-own tobacco in bond; and need not exceed \$250,000 for a manufacturer producing or receiving any combination of tobacco products in bond. The bond of a manufacturer of tobacco products shall in no case be less than \$1,000.

[T.D. ATF-232, 51 FR 28080, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF-289, 54 FR 48839, Nov. 27, 1989; T.D. ATF-424, 64 FR 71931, Dec. 22, 1999]

§ 40.134 Amount of blanket bond.

In the case of a blanket bond filed under the provisions of § 40.67, where the total amount of individual bonds otherwise required for the factories under § 40.133 does not exceed \$250,000, such blanket bond shall be not less than the total amount of such individual bonds. Where the total amount of such individual bonds required is in excess of \$250,000 but not in excess of \$500,000, the amount of the blanket bond shall be not less than \$250,000 plus 50 percent of such total amount which is in excess of \$250,000. Where the total amount of such individual bonds required is in excess of \$500,000 the amount of the blanket bond shall be not less than \$375,000 plus 25 percent of such total amount which is in excess of \$500,000.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 40.135 Strengthening bond.

Where the amount of any bond is no longer sufficient under the provisions of § 40.133 or § 40.134, the manufacturer shall immediately file a strengthening bond in an appropriate amount with the same surety as that on the bond already in effect, unless a superseding bond is filed pursuant to § 40.136. Strengthening bonds will not be approved where any notation is made thereon which is intended, or which may be construed, as a release of any former bond, or as limiting the amount of either bond to less than its full amount.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 40.136 Superseding bond.

A manufacturer of tobacco products shall immediately file a new bond to supersede his current bond when

(a) The corporate surety on the current bond becomes insolvent,

(b) The appropriate TTB officer approves a request from the surety on the current bond to terminate his liability under the bond,

(c) Payment of any liability under a bond is made by the surety thereon,

(d) The amount of the bond is no longer sufficient under the provisions of § 40.133 or § 40.134 and a strengthening bond has not been filed, or

(e) The appropriate TTB officer considers such a superseding bond necessary for the protection of the revenue.

Where a bond is not filed as required under the provisions of this section the manufacturer shall discontinue forthwith the operations to which such bond relates.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 40.137 Extension of coverage of bond.

An extension of coverage of bond shall be manifested on TTB F 5200.18 by the manufacturer of tobacco products and by the surety on the bond with the same formality and proof of authority as required for the execution of the bond.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 40.138 Approval of bond and extension of coverage of bond.

No person shall commence operations under any bond, nor extend his operations, until he receives from the appropriate TTB officer notice of his approval of the bond or of an appropriate extension of coverage of the bond required under this part.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 40.139 Termination of bond.

Any bond required by this part may be terminated by the appropriate TTB officer as to liability for future operations (a) pursuant to application by the surety as provided in the bond, (b) on approval of a superseding bond, or (c) when operations by the manufacturer are permanently discontinued in accordance with subpart J. After a bond is terminated the surety shall remain bound with respect to any liability for unpaid taxes, penalties, and interest, not in excess of the amount of the bond, incurred by the manufacturer prior to the termination date.

(72 Stat. 1421; 26 U.S.C. 5711)

[T.D. 6840, 30 FR 9311, July 27, 1965. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 40.140 Release of pledged securities.

Securities of the United States pledged and deposited as provided in § 40.132 shall be released only in accordance with the provisions of 31 CFR part

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225. Such securities will not be released by the appropriate TTB officer until liability under the bond for which they were pledged has been terminated. When the appropriate TTB officer is satisfied that they may be released, he shall fix the date or dates on which a part or all of such securities may be released. At any time prior to the release of such securities, the appropriate TTB officer may extend the date of release for such additional length of time as he deems necessary.

(61 Stat. 650, 72 Stat. 1421; 31 U.S.C. 9301, 9303, 26 U.S.C. 5711)

Subpart H—Operations by Manufacturers of Tobacco Products

DETERMINATION AND PAYMENT OF TAXES ON TOBACCO PRODUCTS

§ 40.161 Determination of tax and method of payment.

Except for removals in bond and transfers in bond, as authorized by law, the taxes imposed on tobacco products by section 5701, I.R.C., shall be determined at the time of removal of such products and paid on the basis of a return, in accordance with the provisions of this part.

(72 Stat. 1417; 26 U.S.C. 5703)

[T.D. 6929, 32 FR 13866, Oct. 5, 1967. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF-232, 51 FR 28081, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

§ 40.162 Semimonthly tax return.

Every manufacturer of tobacco products shall file, for each of his factories, a semimonthly tax return on Form 5000.24 for each return period, including any period during which a manufacturer begins or discontinues business. The return shall be filed with TTB in accordance with the instructions on the form. The manufacturer shall file the return at the time specified in § 40.165 regardless of whether tobacco products are removed or whether tax is due for that particular return period. However, when the manufacturer requests by letter and the appropriate TTB officer grants specific authorization, the manufacturer need not during the term of such authorization file a

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tax return for which tax is not due or payable.

[T.D. ATF-232, 51 FR 35353, Oct. 3, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF-251, 52 FR 19339, May 22, 1987]

§ 40.163 Semimonthly tax return periods.

Except as otherwise provided in § 40.164, the periods to be covered by semimonthly tax returns are from the 1st day of each month through the 15th day of that month and from the 16th day of each month through the last day of that month.

[T.D. TTB-89, 76 FR 3513, Jan. 20, 2011]

§ 40.164 Special rule for taxes due for the month of September.

(a) *Division of second semimonthly period.* (1) *General.* Except as otherwise provided in paragraph (a)(2) of this section, the second semimonthly period for the month of September is divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 16–26, no later than September 29. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes for which remittance by electronic fund transfer (EFT) is not required by § 40.165a, the second semimonthly period of September is divided into two payment periods, from the 16th day through the 25th day, and from the 26th day through the 30th day. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 16–25, no later than September 28. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(b) *Amount of payment—Safe harbor rule.* (1) *General.* Taxpayers are considered to have met the requirements of paragraph (a)(1) of this section if the amount paid no later than September 29 is not less than 11/15ths (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15,

and if any underpayment of tax is paid by October 14.

(2) *Taxpayment not by EFT.* Taxpayers are considered to have met the requirements of paragraph (a)(2) of this section if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(c) *Weekends and holidays.* If the required taxpayment due date for the period September 16–25 or September 16–26, as applicable, falls on a Saturday or legal holiday, the return and remittance are due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance are due on the immediately following day.

(d) *Example: Payment of tax for the month of September.* (1) *Facts.* X, a manufacturer of tobacco products required to pay taxes by electronic fund transfer, incurred tax liability in the amount of \$30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of \$45,000, and for the period September 27–30, X incurred tax liability in the amount of \$2,000.

(2) *Payment requirement.* X's payment of tax in the amount of \$30,000 for the first semimonthly period of September is due no later than September 29 (§ 40.165(a)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 40.164(a)(1)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 40.164(b)). Under the safe harbor rule, X's payment of tax must not be less than \$21,990.00, that is, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X must pay the tax in the amount of \$2,000 for the period September 27–30 no later than October 14 (§ 40.164(a)(1)). X must also pay the underpayment of tax, \$23,010.00, for the period September 16–26, no later than October 14 (§ 40.164(b)).

[T.D. TTB-89, 76 FR 3513, Jan. 20, 2011]

§ 40.165 Times for filing semimonthly return.

(a) *General.* Except as otherwise provided in § 40.164 and in paragraph (b) of this section, semimonthly returns on TTB F 5000.24 must be filed, for each return period, not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday, or legal holiday, except as otherwise provided in § 40.164(c).

(b) *Postmark.* The official postmark of the U.S. Postal Service stamped on the cover in which the return was mailed shall be considered the date of delivery of the tax return and, if the return was accompanied by a remittance, the date of delivery of the remittance. When the postmark is illegible, the manufacturer shall prove when the postmark was made. When the proprietor sends the tax return with or without remittance by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, shall be treated as the date of delivery of the tax return and, if accompanied, of the remittance.

(Approved by the Office of Management and Budget under control number 1512-0467)

[T.D. ATF-246, 52 FR 669, Jan. 8, 1987, as amended by T.D. ATF-251, 52 FR 19339, May 22, 1987; T.D. ATF-365, 60 FR 33675, June 28, 1995; T.D. ATF-446, 66 FR 16602, Mar. 27, 2001; T.D. ATF-446a, 66 FR 19089, Apr. 13, 2001; T.D. TTB-89, 76 FR 3514, Jan. 20, 2011]

§ 40.165a Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 41 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of taxes on tobacco products, cigarette papers, and cigarette tubes during the succeeding calendar year. Payment of taxes on tobacco products by cash, check, or money order, as described in § 40.168, is not authorized for a taxpayer who is

required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including tobacco products, cigarette papers, and cigarette tubes brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words “at least 80 percent” shall be replaced by the words “more than 50 percent” in each place it appears in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a “controlled group of corporations” apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of determining who is required to make remittances by EFT.

(3) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate return, Form 5000.24, for each factory from which tobacco products are withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 41 of this chapter, during the previous calendar year, shall notify, in writing, the appropriate TTB officer. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer’s bank to make an electronic fund transfer in the amount of the tax payment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in § 40.165 or § 40.167. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 41 of this chapter during the preceding calendar year, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return on as prescribed by § 40.168. Upon filing the first return which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the appropriate TTB officer by attaching a written notification to Form 5000.24, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the return, Form 5000.24, information about remitting the tax for that return period by EFT and shall file the return with the TTB, in accordance with the instructions on Form 5000.24.

(2) Remittances shall be considered as made when the taxpayment by electronic fund transfer is received by the Treasury Account. For purposes of this section, a taxpayment by electronic fund transfer shall be considered as received by the Treasury Account when it is paid to a Federal Reserve Bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment,

and shall be retained as part of required records.

(d) *Failure to make a taxpayment by EFT.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5761, 6651, or 6656, as applicable, for failure to make a tax payment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the appropriate TTB officer will issue to the taxpayer a TTB procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(Approved by the Office of Management and Budget under control number 1512-0457)

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 202, Pub. L. 85-859, 72 Stat. 1417, as amended (26 U.S.C. 5703))

[T.D. ATF-198, 49 FR 37582, Sept. 25, 1984]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 40.165a, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 40.166 Default, prepayment of tax required.

Where a check or money order tendered with any return, whether semi-monthly or prepayment, for payment of tax on tobacco products is not paid on presentment, where a manufacturer fails to remit with the return the full amount of tax due thereunder, or where a manufacturer is otherwise in default in payment of tax on tobacco products under the internal revenue laws or this chapter, during the period of such default and until the appropriate TTB officer finds that the revenue will not be jeopardized by the deferred payment of tax pursuant to the provisions of this part, no tobacco products shall be removed subject to tax until the tax thereon has first been paid as provided in § 40.167. Any remittance made during the period of a default shall be in cash, or in the form of a certified, cashier's, or treasurer's

check drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State, Territory, or possession of the United States, or in the form of a U.S. postal money order or other money order, and defined in § 70.61 of this chapter (payment by check or money order), or shall be delivered in the form of an electronic fund transfer message as provided in § 40.165a.

(68A Stat. 777, 72 Stat. 1417; 26 U.S.C. 6311, 5703; Aug. 16, 1954, ch. 736, 68A Stat. 707 (26 U.S.C. 5703); Aug. 16, 1954, ch. 736, 68A Stat. 777 (26 U.S.C. 6311))

[T.D. 6871, 31 FR 34, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979; T.D. ATF-77, 46 FR 3008, Jan. 13, 1981; T.D. ATF-232, 51 FR 28081, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-301, 55 FR 47658, Nov. 14, 1990]

§ 40.167 Prepayment tax return.

(a) To prepay the tax on tobacco products a manufacturer shall file a prepayment tax return on Form 5000.24 showing the tax to be paid on the tobacco products prior to removal. The return shall be executed and filed, prior to the removal of such products, with TTB, in accordance with the instructions on the form. A manufacturer prepaying the taxes on tobacco products under the provisions of this section shall continue to file semimonthly returns as required by § 40.162.

(b) However, if a manufacturer is required by § 40.165a to pay the tax by electronic fund transfer, the manufacturer shall prepay the tax before any tobacco products can be removed for consumption or sale by completing the return and filing it with TTB, in accordance with the instructions on the

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form. At the same time, the manufacturer shall direct his bank to effect an EFT.

(Sec. 202, Pub. L. 85-859, 68A Stat. 1417 (26 U.S.C. 5703); sec. 202, Pub. L. 85-859, 72 Stat. 1423, as amended (26 U.S.C. 5741); (Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302)); 26 U.S.C. 7805 (68A Stat. 917, as amended))

[T.D. 6871, 31 FR 34, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-77, 46 FR 3008, Jan. 13, 1981; T.D. ATF-219, 50 FR 51390, Dec. 17, 1985; T.D. ATF-232, 51 FR 28081, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987]

§ 40.168 Remittance with return.

Except when an electronic fund transfer has been made under § 40.165a for the full amount of tax due, the tax on tobacco products shown to be due and payable on any return shall be paid by remittance in full with the tax return. The remittance may be in the form which the appropriate TTB officer is authorized to accept under § 70.61 of this chapter (Payment by check or money order) and which is acceptable to him, except as otherwise specified in § 40.166. Checks and money orders shall be made payable to the "Alcohol and Tobacco Tax and Trade Bureau". In paying the tax, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(68A Stat. 778, 72 Stat. 1417; 26 U.S.C. 6313, 5703; Aug. 16, 1954, ch. 736, 68A Stat. 707, as amended (26 U.S.C. 5703))

[T.D. 6871, 31 FR 35, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979; T.D. ATF-77, 46 FR 3009, Jan. 13, 1981; T.D. ATF-232, 51 FR 28081, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-301, 55 FR 47658, Nov. 14, 1990]

§ 40.169 Employer identification number.

The employer identification number (defined at 26 CFR 301.7701-12) of a manufacturer of tobacco products who has been assigned such a number shall be shown on each tax return, Form 5000.24. Failure of the manufacturer to include his employer identification number on Form 5000.24 may result in

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assertion and collection of the penalty specified in § 70.113 of this chapter.

[T.D. ATF-219, 50 FR 51390, Dec. 17, 1985, as amended by T.D. ATF-301, 55 FR 47658, Nov. 14, 1990]

§ 40.170 Application for employer identification number.

Every manufacturer of tobacco products who has neither secured an employer identification number nor made application therefor shall file an application on Form SS-4. Form SS-4 may be obtained from any service center director or from any district director. Such application shall be filed on or before the seventh day after the date on which any tax return under this part is filed. Each manufacturer shall make application for and shall be assigned only one employer identification number for all internal revenue tax purposes.

(75 Stat. 828; 26 U.S.C. 6109)

[T.D. 7055, 35 FR 13515, Aug. 25, 1970. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 40.171 Execution and filing of Form SS-4.

The application on Form SS-4, together with any supplementary statement, shall be prepared in accordance with the form, instructions, and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. The application shall be filed with the service center director serving any internal revenue district where the applicant is required to file returns under this part, except that hand-carried applications may be filed with the district director of any such district as provided for in 26 CFR 301.6091-1. The application shall be signed by (a) the individual if the person is an individual; (b) the president, vice president, or other principal officer if the person is a corporation; (c) a responsible and duly authorized member or officer having knowledge of its affairs if the person is a partnership or other unincorporated organization; or

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(d) the fiduciary if the person is a trust or estate.

(75 Stat. 828; 26 U.S.C. 6109)

[T.D. 7055, 35 FR 13515, Aug. 25, 1970. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979]

RECORDS

§ 40.181 General.

Every manufacturer of tobacco products must keep records of his operations and transactions which shall reflect, for each day, the information specified in §§ 40.182 and 40.183. For this purpose *day* shall mean calendar day, except that the appropriate TTB officer may, upon application of the manufacturer by letter, in duplicate, authorize as such day for a factory a 24-hour cycle of operation other than the calendar day. A day once so established as other than the calendar day may be changed only by another application approved by the appropriate TTB officer. No specific form is required. The manufacturer may use commercial records from which the required information may be readily ascertained for this purpose. The manufacturer shall keep the auxiliary and supplemental records from which such records are compiled and shall keep supporting records, as specified in §§ 40.184 and 40.186, of tobacco products removed subject to tax and transferred in bond. Except as provided in §§ 40.184 and 40.186, the entries in the commercial records so maintained or kept shall be made not later than the close of the next business day following the day on which the transaction(s) occurred. As used in this section the term *business day* shall mean any day other than Saturday, Sunday, a legal holiday in the District of Columbia, or a statewide legal holiday in the State wherein the factory to which the records relate is located.

(72 Stat. 1423, as amended; 26 U.S.C. 5741)

[T.D. ATF-424, 64 FR 71931, Dec. 22, 1999]

§ 40.182 Record of tobacco and processed tobacco.

(a) Except as provided in paragraph (b) of this section, a manufacturer of tobacco products must maintain a

record that shows the total quantity in pounds of all:

(1) Processed tobacco on hand at the beginning of each month;

(2) Processed tobacco received, together with the name and address of the person from whom received and the date of receipt;

(3) Processed tobacco used in the manufacture of tobacco products, together with the date of use;

(4) Processed tobacco lost, together with the date and other circumstances of the loss;

(5) Processed tobacco destroyed, together with the date and other circumstances of the destruction;

(6) Processed tobacco removed, together with the date of the removal and reason for the removal; and

(7) Tobacco (unprocessed) on hand at the beginning of each month and used in the manufacture of tobacco products, lost, destroyed, or removed during each month.

(b) A manufacturer of tobacco products that is required to obtain authorization to engage in another business within the factory under §§ 40.47(b) and 40.72(b) must keep records as prescribed in § 40.521, in addition to those required elsewhere in this part.

(Approved by the Office of Management and Budget under control number 1513-0068)

[T.D. TTB-104, 77 FR 37302, June 21, 2012]

§ 40.183 Record of tobacco products.

The record of a manufacturer of tobacco products must show the date and total quantities of all tobacco products by kind (small cigars; large cigars; small cigarettes; large cigarettes; chewing tobacco; snuff; pipe tobacco; roll-your-own tobacco) that are:

(a) Manufactured;

(b) Received in bond by—

(1) Transfer from other factories,

(2) Release from customs custody,

(3) Transfer from export warehouses, and

(4) Transfer from foreign trade zones;

(c) Received by return to bond;

(d) Disclosed as an overage by inventory;

(e) Removed subject to tax (itemize large cigars by sale price in accordance with § 40.22, except that before April 1, 2009, cigars that cost more than \$235.294 may optionally be shown as if the price

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were \$236 per thousand, and on and after April 1, 2009, cigars that cost more than \$763.222 may optionally be shown as if the price were \$764 per thousand);

(f) Removed, in bond, for—

- (1) Export,
- (2) Transfer to export warehouses,
- (3) Transfer to other factories,
- (4) Transfer to foreign trade zones,
- (5) Use of the United States, and
- (6) Experimental purposes off factory premises;

(g) Otherwise disposed of, without determination of tax, by—

(1) Consumption by employees on factory premises,

(2) Consumption by employees off factory premises, together with the number of employees to whom furnished,

(3) Use for experimental purposes on factory premises,

(4) Loss,

(5) Destruction, and

(6) Reduction to materials;

(h) Disclosed as a shortage by inventory; and

(i) On which the tax has been determined and which are—

(1) Received, and

(2) Disposed of.

(Approved by the Office of Management and Budget under control number 1513–0068.)

[T.D. ATF-421, 64 FR 71923, Dec. 22, 1999, as amended by T.D. ATF-424, 64 FR 71931, Dec. 22, 1999; T.D. ATF-420, 64 FR 71940, Dec. 22, 1999; T.D. TTB-75, 74 FR 14482, Mar. 31, 2009; 78 FR 38567, June 27, 2013]

EFFECTIVE DATE NOTE: At 78 FR 38567, June 27, 2013, § 40.183 was amended by revising the introductory text and paragraphs (a) through (d) and (f) through (i) and the Office of Management and Budget control number referenced at the end of the section, effective Aug. 26, 2013 through Aug. 26, 2016.

§ 40.184 Record of removals subject to tax.

(a) *Requirement.* Every manufacturer of tobacco products must keep a record of tobacco products removed from the factory subject to tax. The manufacturer must make entries in this record at the time of removal. The record for each removal must show:

(1) The date of removal,

(2) The name and address of the person to whom shipped or delivered,

(3) The kind and quantity of tobacco products removed, and

(4) For large cigars, show the sale price (if the sale price is more than \$235.294 per thousand before April 1, 2009, or more than \$763.222 per thousand on and after April 1, 2009, you may place a note to that effect in the record instead of the actual price).

(b) *Exceptions.* (1) The record of removal may consist of the manufacturer's commercial documents, such as copies of invoices, rather than records prepared expressly to meet the requirements of this section. If commercial documents are used, they must be kept at the factory, contain all the details required by this section, and be clear and accurate. Commercial documents that do not show specifically the tax classification of tobacco products (including sale price of large cigars) are still acceptable if they contain adequate information for an appropriate TTB officer to readily ascertain the applicable tax.

(2) Where tobacco products are delivered within the factory directly to the consumer, the record need not show the name and address of the consumer.

(Sec. 2128(c), Pub. L. 94–455, 90 Stat. 1921 (26 U.S.C. 5741))

[T.D. ATF-420, 64 FR 71941, Dec. 22, 1999, as amended by T.D. TTB-75, 74 FR 14483, Mar. 31, 2009]

§ 40.185 Retention of records.

All records required to be kept under this part, including copies of authorizations, claims, inventories, notices, reports, returns and schedules, shall be retained by the manufacturer for three years following the close of the calendar year in which filed or made, or in the case of an authorization, for three years following the close of the calendar year in which the operation under such authorization is concluded. Such records shall be kept in the factory or a place convenient thereto, and shall be made available for inspection by any appropriate TTB officer upon his request.

(72 Stat. 1423; 26 U.S.C. 5741)

§ 40.186 Record in support of transfers in bond.

Every manufacturer of tobacco products shall keep a supporting record of tobacco products transferred in bond to or received in bond from other factories, and shall make the entries therein at the time of each receipt or removal of such products. Such supporting records shall show the date of receipt or removal, the name of the manufacturer and address of the factory from which received or to which removed or the permit number of such factory, and the kind and quantity of tobacco products. Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each receipt and removal, in such orderly manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section.

(Approved by the Office of Management and Budget under control number 1512-0358)

(72 Stat. 1423, as amended; 26 U.S.C. 5741)

[T.D. 6871, 31 FR 35, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-172, 49 FR 14943, Apr. 16, 1984; T.D. ATF-232, 51 FR 28081, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

§ 40.187 Record of sales prices of large cigars.

Every manufacturer of tobacco products who removes large cigars from the factory shall keep such records as are necessary to establish and verify the price for which the cigars are sold, in accordance with § 40.22. The record shall be a continuing one of each brand and size of cigar so that the sale price on which the tax is based may be readily ascertained.

[T.D. ATF-307, 55 FR 52743, Dec. 21, 1990. Redesignated and amended by T.D. ATF-420, 64 FR 71941, Dec. 22, 1999; T.D. ATF-420, 65 FR 1676, Jan. 11, 2000]

INVENTORIES AND REPORTS

§ 40.201 Inventories.

Every manufacturer of tobacco products shall make true and accurate inventories on Form 5210.9, which inventories shall include all tobacco products and processed tobacco on hand re-

quired to be accounted for in the records kept under this part. The manufacturer shall make such an inventory at the time of commencing business, which shall be the effective date of the permit issued upon original qualification under this part; at the time of transferring ownership; at the time of changing the location of his factory; at the time of concluding business; and at such other time as any appropriate TTB officer may require. Each inventory shall be prepared in duplicate, and shall be subject to verification by an appropriate TTB officer. The original of each such inventory shall be submitted to the appropriate TTB officer, and the duplicate shall be retained by the manufacturer.

(Approved by the Office of Management and Budget under control number 1512-0358)

(72 Stat. 1422, 1423, as amended; 26 U.S.C. 5721, 5741)

[T.D. 6871, 31 FR 35, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-172, 49 FR 14943, Apr. 16, 1984; T.D. ATF-232, 51 FR 28081, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-424, 64 FR 71931, Dec. 22, 1999; T.D. TTB-78, 74 FR 29409, June 22, 2009; T.D. TTB-91, 76 FR 5480, Feb. 1, 2011]

§ 40.202 Reports.

(a) *Monthly report.* Every manufacturer of tobacco products shall make a report on Form 5210.5, in duplicate, for each month and for any portion of a month during which he engages in such business. Such report shall be made regardless of whether any operations or transactions occurred during the month or portion of a month covered therein. The report for a month or portion of a month in which business is commenced or is concluded shall be conspicuously marked "Commencing Report" or "Concluding Report," respectively. The original of the report shall be submitted to the appropriate TTB officer not later than the 20th day of the month succeeding the month covered therein, and the duplicate shall be retained by the manufacturer. Each report shall show, for the period covered, the total quantity of tobacco products:

- (1) Manufactured,
- (2) Received in bond,
- (3) Received by return to bond,

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(4) Disclosed by inventory as an overage,

(5) Removed subject to tax,

(6) Removed in bond,

(7) Otherwise disposed of without determination of tax,

(8) Disclosed by inventory as a shortage, and

(9) On hand, in bond, beginning of and end of month.

(b) *Report of processed tobacco.* In addition to complying with the requirements set forth in this part relating to the reporting of tobacco products, a manufacturer of tobacco products that is required to obtain authorization to engage in another business within the factory under §§ 40.47(b) and 40.72(b) must also make and submit reports as prescribed in § 40.522.

(Approved by the Office of Management and Budget under control number 1513-0033)

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5722))

[T.D. 6871, 31 FR 36, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-40, 42 FR 5001, Jan. 26, 1977; T.D. ATF-232, 51 FR 28081, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-307, 55 FR 52743, Dec. 21, 1990; T.D. ATF-424, 64 FR 71931, Dec. 22, 1999; T.D. TTB-78, 74 FR 29409, June 22, 2009; T.D. TTB-104, 77 FR 37302, June 21, 2012]

PACKAGES

§ 40.211 Package.

All tobacco products shall, before removal subject to tax, be put up by the manufacturer in packages which shall be of such construction as will securely contain the products therein and maintain the mark and the notice thereon as required by this part. No package of tobacco products shall have contained therein, attached thereto, or stamped, marked, written, or printed thereon (a) any certificate, coupon, or other device purporting to be or to represent a ticket, chance, share, or an interest in, or dependent on, the event of a lottery, (b) any indecent or immoral picture, print, or representation, or (c) any statement or indication that United States tax has been paid. No person may purchase, receive, possess (except for personal consumption), offer for sale, or sell or otherwise dispose of, after removal, any tobacco products

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that are not put up in packages bearing the marks, labels, and notices, as required under this part.

(26 U.S.C. 5723 and 5751)

[T.D. 6871, 31 FR 36, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28081, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. TTB-78, 74 FR 29409, June 22, 2009]

§ 40.212 Mark.

Every package of tobacco products packaged in a domestic factory shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, a mark as specified in this section. The mark may consist of the name of the manufacturer removing the product subject to tax and the location (by city and State) of the factory from which the products are to be so removed, or may consist of the permit number of the factory from which the products are to be so removed. (Any trade name of the manufacturer approved as provided in § 40.65 may be used in the mark as the name of the manufacturer.) As an alternative, where tobacco products are packaged and removed subject to tax by the same manufacturer, either at the same or different factories, the mark may consist of the name of such manufacturer if the factory where packaged is identified on or in the package by a means approved by the appropriate TTB officer. Before using the alternative, the manufacturer shall notify the appropriate TTB officer in writing of the name to be used as the name of the manufacturer and the means to be used for identifying the factory where packaged. If approved by him the appropriate TTB officer shall return approved copies of the notice to the manufacturer. A copy of the approved notice shall be retained as part of the factory records at each of the factories operated by the manufacturer.

(72 Stat. 1422; 26 U.S.C. 5723)

[T.D. 6871, 31 FR 36, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF-232, 51 FR 28081, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986]

§ 40.213 Tobacco products labeled for export.

Tobacco products labeled for export are ineligible for removal from the factory for distribution into the U.S. domestic market. Tobacco products labeled for export may not be sold, transferred, or delivered into the U.S. domestic market by a manufacturer of tobacco products unless the manufacturer repackages the tobacco product by removing it from its original package bearing the export marks and placing it into a new package. The new package, mark, and notice must conform to the requirements of this subpart.

[78 FR 38567, June 27, 2013]

EFFECTIVE DATE NOTE: At 78 FR 38567, June 27, 2013, § 40.213 was revised, effective Aug. 26, 2013 through Aug. 26, 2016.

§ 40.214 Notice for cigars.

Before removal subject to tax, every package of cigars shall have adequately imprinted on it, or on a label securely affixed to it—

- (a) The designation “cigars”;
- (b) The quantity of cigars contained in the package; and
- (c) For small cigars, the classification of the product for tax purposes (i.e., either “small” or “little”).

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723))

[T.D. ATF-80, 46 FR 18310, Mar. 24, 1981]

§ 40.215 Notice for cigarettes.

Every package of cigarettes shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation “cigarettes”, the quantity of such product contained therein, and the classification for tax purposes, i.e., for small cigarettes, either “small” or “Class A”, and for large cigarettes, either “large” or “Class B”.

(72 Stat. 1422; 26 U.S.C. 5723)

§ 40.216 Notice for smokeless tobacco.

(a) *Product designation.* Every package of chewing tobacco or snuff shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation “chewing tobacco” or “snuff.”

As an alternative, packages of chewing tobacco may be designated “Tax Class C”, and packages of snuff may be designated “Tax Class M”.

(b) *Product weight.* Every package of chewing tobacco or snuff shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement of the actual pounds and ounces of the product contained therein. As an alternative, the shipping cases containing packages of chewing tobacco or snuff may, before removal, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement, in pounds and ounces, of the total weight of the product, the tax class of the product, and the total number of the packages of product contained therein.

(Approved by the Office of Management and Budget under control number 1512-0502)

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723))

[T.D. ATF-243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF-446, 66 FR 16602, Mar. 27, 2001]

§ 40.216a Notice for pipe tobacco.

(a) *Product designation.* Every package of pipe tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation “pipe tobacco.”

(b) *Product weight.* Every package of pipe tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement of the actual pounds and ounces of the product contained therein.

[T.D. ATF-289, 54 FR 48840, Nov. 27, 1989. Redesignated at T.D. ATF-424, 64 FR 71931, Dec. 22, 1999; T.D. TTB-78, 74 FR 29410, June 22, 2009]

§ 40.216b Notice for roll-your-own tobacco.

(a) *Product designation.* Every package of roll-your-own tobacco, before removal subject to tax, must have adequately imprinted on it, or on a label securely affixed to it, the applicable designation “roll-your-own tobacco”, “cigarette tobacco”, “cigar tobacco”,

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“cigarette wrapper”, or “cigar wrapper”.

(b) *Product weight.* Before removal subject to tax, roll-your-own tobacco must have a clear statement of the actual weight in pounds and ounces of the product in the package. This statement must be adequately imprinted on, or on a label securely affixed to, the package.

(Approved by the Office of Management and Budget under control number 1513–0091)

[T.D. ATF–429, 65 FR 57547, Sept. 25, 2000, as amended by T.D. TTB–78, 74 FR 29410, June 22, 2009]

§ 40.216c Package use-up rule.

(a) During the period from June 22, 2009, through March 23, 2010, a manufacturer of tobacco products may remove packages of pipe tobacco or roll-your-own tobacco that do not meet the requirements of § 40.216a(a) or § 40.216b(a), provided that such packages bear the designation “Tax Class L” (to designate pipe tobacco) or “Tax Class J” (to designate roll-your-own tobacco) and were in use prior to June 22, 2009.

(b) During the period from June 22, 2009, through March 23, 2010, a manufacturer may remove roll-your-own tobacco for which the applicable designation is “cigar tobacco,” “cigarette wrapper,” or “cigar wrapper” even if the packages of such products do not meet the requirements of § 40.216b.

[T.D. TTB–81, 74 FR 48654, Sept. 24, 2009]

§ 40.217 Repackaging.

Where a manufacturer of tobacco products desires to repackage, outside the factory, tobacco products on which the tax has been determined or which were removed for a tax-exempt purpose or transferred in bond to an export warehouse, or to repackage tax determined tobacco products in the factory, he shall make application for authorization to do so, in duplicate, to the appropriate TTB officer. The application shall set forth the location and the number of packages, a description of the contents, the tax status of the tobacco products the reason for wanting to repackage the products (e.g., packages soiled, damaged, or otherwise in a condition making the product

unsalable), and a description of the package to be used for repackaging. The packages to be used must comply with the package, mark, and notice provisions of this chapter applicable to the tobacco products being repackaged. The operations authorized under this section are limited solely to repackaging for good cause by a manufacturer, pursuant to an approved application, of the specified tobacco products in the described packages, and do not include any manufacturing processes. If the appropriate TTB officer approves the application, he may assign an appropriate TTB officer to supervise the repackaging or he may authorize the manufacturer to repackage the products without supervision by so stating on a copy of the application returned to the manufacturer. Where the manufacturer is authorized to repackage he shall record the date of repackaging on the approved application and retain it as part of his records.

(72 Stat. 1422; 26 U.S.C. 5723)

[T.D. 6871, 31 FR 36, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28082, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

EXEMPTION FROM TAXES ON TOBACCO PRODUCTS

§ 40.231 Consumption by employees.

A manufacturer of tobacco products may gratuitously furnish tobacco products, without determination and payment of tax, for personal consumption by employees in the factory in such quantities as desired. Each employee may also be gratuitously furnished by the manufacturer, for off-factory personal consumption, not more than 5 large cigars or cigarettes, 20 small cigars or cigarettes, or one retail package of chewing tobacco, snuff, pipe tobacco or roll-your-own tobacco, or a proportionate quantity of each, without determination and payment of tax, on each day the employee is at work. For the purposes of this section, the term “employee” shall mean those persons whose duties require their presence in the factory or whose duties relate to the manufacture, distribution,

or sale of tobacco products and who receive compensation from the manufacturer, or a parent, subsidiary, or auxiliary company or corporation of the manufacturer. Such product furnished for off-factory consumption shall be furnished to the employee within the factory and taken from the factory by the employee on the day for which furnished. Employees shall not sell, offer for sale, or give away products so furnished.

[T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF-289, 54 FR 48840, Nov. 27, 1989; T.D. ATF-424, 64 FR 71931, Dec. 22, 1999; T.D. TTB-91, 76 FR 5480, Feb. 1, 2011]

§ 40.232 Experimental purposes.

A manufacturer of tobacco products may use tobacco products for experimental purposes without determination and payment of tax as set forth in this section.

(a) *What are experimental purposes?* Experimental purposes are operations or tests carried out under controlled conditions to discover an unknown scientific principle or fact, to gather or confirm data about a known scientific principle or fact, or to test manufacturing, packaging, or other such equipment. Examples of uses for experimental purposes are:

(1) Use by manufacturers to determine scientific facts relating to tobacco products, such as their chemical content;

(2) Use by producers of packaging machines to test the operation of such machines; and

(3) Use by laboratories, hospitals, medical centers, institutes, colleges, or universities, for scientific, technical, or medical research.

(b) *What purposes are not experimental?* The uses of tobacco products outside the factory premises for advertising or consumer testing or as salespersons' or customers' samples are not experimental purposes.

(c) *Use in factory.* A manufacturer of tobacco products may use tobacco products without determination and payment of tax for experimental purposes in a factory.

(d) *Use outside factory.* A manufacturer may remove tobacco products in bond for experimental purposes outside

a factory. When tobacco products are shipped for experimental purposes outside the factory, the proprietor of the factory remains liable for the taxes imposed by 26 U.S.C. 5701 until the occurrence of one of the following events:

(1) The tobacco products are returned to the premises of the factory from which they were shipped; or

(2) The tobacco products are destroyed during or after their use for experimental purposes.

(e) *Record of use.* In addition to the records prescribed by § 40.183, a manufacturer who removes tobacco products in bond for experimental purposes outside a factory must prepare and maintain a record containing the following information:

(1) Name and address of the consignee;

(2) Kind and quantity of tobacco products removed;

(3) Description of packaging, if any, of the tobacco products removed;

(4) Description of how and when the consignee will use the tobacco products; and

(5) Disposition of any remaining tobacco products after the consignee's use.

(Approved by the Office of Management and Budget under Control Number 1512-0562)

(72 Stat. 1418, as amended; 26 U.S.C. 5704)

[T.D. ATF-478, 67 FR 19333, Apr. 19, 2002]

§ 40.233 Transfer in bond.

A manufacturer of tobacco products may transfer tobacco products in bond, to the factory of any manufacturer of tobacco products. The transfer of tobacco products in bond to the premises of an export warehouse proprietor shall be in accordance with the provisions of part 44 of this chapter. However, tobacco products are eligible for transfer in bond to a manufacturer of tobacco products or to an export warehouse only if they bear the required marks, labels, and notices.

(72 Stat. 1418, as amended; 26 U.S.C. 5704)

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-421, 64 FR 71924, Dec. 22, 1999; 78 FR 38567, June 27, 2013]

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EFFECTIVE DATE NOTE: At 78 FR 38567, June 27, 2013, § 40.233 was amended by revising the last sentence, effective Aug. 26, 2013 through Aug. 26, 2016.

§ 40.234 Removal for use of the United States.

The removal of tobacco products in bond, for use of the United States, shall be in accordance with the provisions of part 45 of this chapter.

(72 Stat. 1418, as amended; 26 U.S.C. 5704)

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-469, 66 FR 56758, Nov. 13, 2001]

§ 40.235 Removal for export purposes.

The removal of tobacco products in bond, for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States, shall be in accordance with the provisions of part 44 of this chapter.

(72 Stat. 1418, as amended; 26 U.S.C. 5704)

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

§ 40.236 Release from customs custody.

The release of tobacco products from customs custody, in bond, for transfer to the premises of a tobacco products factory, shall be in accordance with the provisions of part 41 of this chapter.

(72 Stat. 1418, as amended; 26 U.S.C. 5704)

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. TTB-16, 69 FR 52423, Aug. 26, 2004]

OTHER PROVISIONS RELATING TO OPERATIONS

§ 40.251 Emergency storage.

In cases of emergency, the appropriate TTB officer may authorize, for a stated period, the temporary storage of tobacco products at a place outside the factory without the application for amended permit required under § 40.114, where such action will not hinder the

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effective administration of this part, is not contrary to law, and will not jeopardize the revenue. Application for authorization to so store tobacco products shall be submitted to the appropriate TTB officer by letter, in duplicate. All tobacco products so stored outside the factory shall be accounted for in the records and reports required under §§ 40.183 and 40.202 the same as products within the factory.

(72 Stat. 1422, 1423, as amended; 26 U.S.C. 5722, 5741)

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

§ 40.252 Reduction of tobacco products to materials.

A manufacturer may reduce tobacco products to materials without supervision. If the tobacco products have been entered in the factory record as manufactured or received, an entry shall be made in such record of the quantity of pipe tobacco or roll-your-own tobacco and the kind and quantity of cigars, cigarettes, and smokeless tobacco reduced to materials and of the quantity of tobacco resulting from the reduction. Where the manufacturer intends to file claims for credit allowance, or refund of tax on such tobacco products, he shall comply with the provisions of §§ 40.311 and 40.313.

[T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF-289, 54 FR 48840, Nov. 27, 1989; T.D. ATF-424, 64 FR 71931, Dec. 22, 1999]

§ 40.253 Destruction.

When a manufacturer of tobacco products desires to destroy tobacco products which have been entered in the factory record as manufactured or received, without salvaging the tobacco, he shall notify the appropriate TTB officer by letter, in duplicate, of the kind and quantity of tobacco products to be destroyed, the intended method of destruction, and the date on which he desires to destroy such products. The appropriate TTB officer may assign an appropriate TTB officer to supervise destruction of the tobacco products or he may authorize the manufacturer to destroy such products without supervision by so stating on a

copy of the manufacturer's notice returned to the manufacturer. When so authorized by the appropriate TTB officer, the manufacturer shall destroy the tobacco products by burning completely or by rendering them unfit for consumption. Upon completion of the destruction, the manufacturer shall make an entry of such destruction in his factory record, and where destruction without supervision is authorized, shall record the date and method of destruction on the notice returned to him by the appropriate TTB officer, which notice the manufacturer shall retain. Where the manufacturer intends to file claim for credit, allowance, or refund of tax on such products he shall comply with the provisions of §§ 40.311 and 40.313.

(72 Stat. 1423, as amended; 26 U.S.C. 5741)

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

§ 40.254 Receipt into factory.

A manufacturer of tobacco products may receive in bond into his factory tobacco products and may also receive into his factory tobacco products on which the tax has been determined (including products on which the tax has been paid). Cigars and cigarettes on which the tax has been determined which are so received shall be segregated and identified as products on which the tax has been determined. If tax determined products received into the factory are so handled that they cannot be identified both physically and in the records as tax determined products they shall be accounted for as returned to bond and upon subsequent removal shall be tax determined. Where returned tax determined tobacco products are to be repackaged without being returned to bond the manufacturer shall make application for authorization to do so to the appropriate TTB officer in accordance with § 40.217. Where the manufacturer intends to file claim for credit, allowance, or refund of tax on tax deter-

mined products he shall comply with the provisions of §§ 40.311 and 40.313.

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986]

§ 40.255 Shortages and overages in inventory.

Whenever a manufacturer of tobacco products makes a physical inventory of packaged tobacco products in bond, either as part of normal operations or when required by an appropriate TTB officer, and such inventory discloses a shortage or overage in such products by kind as recorded and reported (*i.e.*, small cigars, large cigars, chewing tobacco, snuff, pipe tobacco, or roll-your-own tobacco), the manufacturer shall enter such shortage or overage in the records required by § 40.183. Shortages or overages in inventories made at different times may not be used to offset each other, but shall be recorded and reported separately. Unless the manufacturer establishes that a shortage was not caused by a removal subject to the tax the manufacturer shall determine the tax on any shortage, make an adjustment in Schedule A of his next semimonthly tax return and pay the tax thereon. If, after paying the tax on a shortage, the manufacturer satisfactorily establishes that the shortage was not caused by a removal subject to tax, then such payment would be an overpayment of tax which the manufacturer may recover as provided in § 40.286. Where the manufacturer can establish prior to paying the tax on a shortage, that the shortage was not the result of a removal subject to tax he shall submit an explanation of such shortage with his report for the month in which the shortage was disclosed and, if appropriate, he may file claim for remission of tax liability as provided in § 40.287. When an overage is disclosed which the manufacturer can explain, he shall include such explanation in his monthly report and refund of any overpayment may be recovered as provided in § 40.286. Whenever a physical inventory discloses a shortage or overage of tobacco products which have not been packaged the manufacturer shall appropriately enter such

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shortage or overage in his records and shall, at the time required by the appropriate TTB officer, furnish an explanation in the form of a claim for remission of tax liability as provided in § 40.287. The manufacturer shall pay the tax on any shortage or portion thereof for which he is unable to furnish an explanation acceptable to the appropriate TTB officer.

[T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF-289, 54 FR 48840, Nov. 27, 1989; T.D. ATF-424, 64 FR 71931, Dec. 22, 1999]

§ 40.256 Minimum manufacturing and activity requirements.

The minimum manufacturing and activity requirement prescribed in § 40.61(c) of this part is a continuing condition of a manufacturer's permit, that is, a permit to manufacture tobacco products is conditioned upon a person's principal business activity being the manufacture of tobacco products. A permit may be suspended, and subsequently revoked, if the person's principal business activity under such permit is to receive or transfer tobacco products in bond, or if the person has no activity under such permit for a period of one year. As a minimum activity requirement, the quantity of tobacco products manufactured under the permit must be equivalent to, or exceed, the quantity transferred or received in bond under the permit.

[T.D. TTB-78, 74 FR 29410, June 22, 2009, as amended by T.D. TTB-80, 74 FR 37552, July 29, 2009; T.D. TTB-104, 77 FR 37303, June 21, 2012]

§ 40.257 Processed tobacco.

A manufacturer of tobacco products may be required to obtain authorization from the appropriate TTB officer with regard to the activities involving processed tobacco. See § 40.72. Such manufacturers also must maintain records and may be required to submit reports regarding such activities. See §§ 40.182 and 40.202.

[T.D. TTB-78, 74 FR 29410, June 22, 2009]

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Subpart I—Claims by Manufacturers

GENERAL

§ 40.281 Abatement of assessment.

A claim for abatement of the unpaid portion of the assessment of any tax on tobacco products or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after expiration of the applicable period of limitation, or is erroneously or illegally assessed. Any claim under this section shall be prepared on TTB F 5620.8, in duplicate, and shall set forth the particulars under which the claim is filed. The original of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the appropriate TTB officer that the claim is valid, shall be filed with the appropriate TTB officer, and the duplicate of the claim shall be retained by the manufacturer.

(68A Stat. 792; 26 U.S.C. 6404)

[T.D. 6871, 31 FR 38, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987]

§ 40.282 Allowance of tax.

Relief from the payment of tax on tobacco products may be extended to a manufacturer by allowance of the tax where the tobacco products after removal from the factory upon determination of tax and prior to the payment of such tax, are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of the manufacturer who removed such products, or are withdrawn by him from the market. Any claim for allowance under this section shall be filed on TTB F 5620.8, in duplicate, with the appropriate TTB officer, and shall show the date the tobacco products were removed from the factory. A claim relating to products lost or destroyed shall be supported as prescribed in § 40.301. In the case of a claim relating to tobacco products withdrawn from the market the schedule prescribed in § 40.311 shall

be filed with the appropriate TTB officer. The manufacturer may not anticipate allowance of his claim by making the adjusting entry in a tax return pending consideration and action on the claim. Tobacco products to which such a claim relates must be shown as removed on determination of tax in the return covering the period during which such products were so removed. Upon action on the claim by the appropriate TTB officer he will return the copy of TTB F 5620.8 to the manufacturer as notice of such action, which copy, with the copy of any verified supporting schedules, shall be retained by the manufacturer. When such notification of allowance of the claim or any part thereof is received prior to the time the return covering the tax on the tobacco products to which the claim relates is to be filed, the manufacturer may make an adjusting entry and explanatory statement in that tax return. Where the notice of allowance is received after the filing of the return and taxpayment of the tobacco products to which the claim relates, the manufacturer may make an adjusting entry and explanatory statement in the next tax return(s) to the extent necessary to take credit in the amount of the allowance.

(72 Stat. 1419, as amended; 26 U.S.C. 5705)

[T.D. 6961, 33 FR 9488, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

§ 40.283 Credit or refund of tax.

The taxes paid on tobacco products may be credited or refunded (without interest) to a manufacturer on proof satisfactory to the appropriate TTB officer that the claimant manufacturer paid the tax on tobacco products lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such manufacturer, or withdrawn by him from the market. Any claim for credit or refund under this section shall be prepared on TTB F 5620.8, in duplicate. Claims shall include a statement that the tax imposed on tobacco products by 26 U.S.C. 7652 or chapter 52, was paid in respect to the tobacco products covered by the claim, and that the products

were lost, destroyed, or withdrawn from the market within 6 months preceding the date the claim is filed. A claim for credit or refund relating to products lost or destroyed shall be supported as prescribed in § 40.301, and a claim relating to products withdrawn from the market shall be accompanied by a schedule prepared and verified as prescribed in §§ 40.311 and 40.313. The original and one copy of TTB F 5620.8, claim for credit, or the original of TTB F 5620.8, claim for refund, shall be filed with the appropriate TTB officer. Upon action by the appropriate TTB officer on a claim for credit he will return the copy of TTB F 5620.8 to the manufacturer as notification of allowance or disallowance of the claim or any part thereof, which copy, with the copy of any verified supporting schedules, shall be retained by the manufacturer. When the manufacturer is notified of allowance of the claim for credit or any part thereof he shall make an adjusting entry and explanatory statement in the next tax return(s) to the extent necessary to take credit in the amount of the allowance. Prior to consideration and action on his claim the manufacturer may not anticipate allowance of his claim by taking credit in his tax return. The duplicate of a claim for refund, with the copy of any verified supporting schedules, shall be retained by the manufacturer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1419)

[T.D. 6961, 33 FR 9489, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979; T.D. ATF-219, 50 FR 51389, Dec. 17, 1985; T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987]

§ 40.284 Remission of tax liability.

Remission of the tax liability on tobacco products may be extended to the manufacturer liable for the tax where tobacco products in bond are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such manufacturer. Where tobacco products are so lost or destroyed the manufacturer shall report promptly such fact, and the circumstances, to the appropriate TTB officer. If the manufacturer

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wishes to be relieved of the tax liability thereon he shall also prepare a claim on TTB F 5620.8, in duplicate, setting forth the nature, date, place, and extent of the loss or destruction. Both copies of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the appropriate TTB officer that the claim is valid, shall be filed with the appropriate TTB officer. Upon action on the claim by the appropriate TTB officer he will return the copy of TTB F 5620.8 to the manufacturer as notice of such action, which copy shall be retained by the manufacturer.

(72 Stat. 1419, as amended; 26 U.S.C. 5705)

[T.D. 6961, 33 FR 9489, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

§ 40.285 [Reserved]

§ 40.286 Refund of overpayment.

Where an error in computation of the quantity of tobacco products or in computation of the amount of tax due results in an overpayment and such error is specifically identified and supported by records, the manufacturer may file claim for refund or may make an adjustment in his semimonthly tax return as provided in § 40.164. (Section 6511, 26 U.S.C., provides that, in most cases, any adjustment of claim for refund of an overpayment of tax on tobacco products must be made or filed within three years after the tax is paid.) If the manufacturer elects to file a claim for refund of an overpayment resulting from such a computational error, he shall do so on TTB F 5620.8, in duplicate. The original shall be filed with the appropriate TTB officer, and the duplicate retained by the manufacturer. Where an overpayment of tax on tobacco products results from other than a computational error any claim for refund or credit shall be made in ac-

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cordance with subpart A of part 46 of this chapter.

(68A Stat. 791, 72 Stat. 9; 26 U.S.C. 6402, 6423)

[T.D. 6871, 31 FR 39, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979; T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987; T.D. ATF-457, 66 FR 32220, June 14, 2001]

§ 40.287 Remission of tax liability on shortage.

Whenever a manufacturer of tobacco products desires to submit a claim for remission of tax liability on shortages of tobacco products in bond, disclosed by physical inventory as set forth in § 40.255, he shall prepare such claim on TTB F 5620.8, in duplicate. Both copies of the claim shall be filed with the appropriate TTB officer. The claim shall specify the quantities of tobacco products on which claim is made and the tax liability in respect thereof, and shall set forth the circumstances surrounding the shortage and the reason the manufacturer believes tax is not due or payable. The appropriate TTB officer will, after such investigation as he deems appropriate, allow the claim to the extent he is satisfied the shortage was due to operating losses such as damage during grading, sorting, or packaging, and was not caused by theft or other unlawful or improper removal. Upon action on the claim by the appropriate TTB officer he will return the copy of TTB F 5620.8 to the manufacturer as notice of such action, which copy shall be retained by the manufacturer.

(72 Stat. 1414, as amended, 1417, 1419, as amended; 26 U.S.C. 5701, 5703, 5705)

[T.D. 6961, 33 FR 9489, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

TOBACCO PRODUCTS LOST OR DESTROYED

§ 40.301 Action by claimant.

Where tobacco products are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, and the manufacturer desires to file a claim for

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the tax on such products under the provisions of § 40.282 or § 40.283, he shall indicate on the claim the nature, date, place, and extent of such loss or destruction. The claim shall be accompanied by such evidence as is necessary to establish to the satisfaction of the appropriate TTB officer that the claim is valid.

(72 Stat. 1419, as amended; 26 U.S.C. 5705)

[T.D. 6871, 31 FR 39, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986]

TOBACCO PRODUCTS WITHDRAWN FROM THE MARKET

§ 40.311 Action by claimant.

(a) *General.* Where tobacco products are withdrawn from the market and the manufacturer desires to file claim under the provisions of § 40.282 or § 40.283, he shall assemble the products in or adjacent to a factory if they are to be returned to bond or at any suitable place if they are to be destroyed or reduced to materials. The manufacturer shall group the products according to the rates of tax applicable to the products, and shall prepare a schedule of the products, on TTB Form 5200.7, in triplicate. All copies of the schedule shall be forwarded to the appropriate TTB officer.

(b) *Large cigars.* Refund or credit of tax on large cigars withdrawn from the market is limited to the lowest tax paid on that brand and size of cigar during the required record retention period (see § 40.185), except where the manufacturer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market, the manufacturer must include a certification on either Form 5200.7 or TTB F 5620.8 to read as follows:

The amounts claimed relating to large cigars are based on the lowest sale price applicable to the cigars during the required record retention period, except where specific documentation is submitted with the

claim to establish that any greater amount of tax claimed was actually paid.

(See 26 U.S.C. 5705)

[T.D. ATF-80, 46 FR 18310, Mar. 24, 1981, as amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987; T.D. ATF-307, 55 FR 52743, Dec. 21, 1990; T.D. ATF-424, 64 FR 71932, Dec. 22, 1999; T.D. ATF-420, 64 FR 71941, Dec. 22, 1999]

§ 40.312 Action by the appropriate TTB officer.

Upon receipt of a schedule of tobacco products withdrawn from the market, the appropriate TTB officer may assign a TTB officer to verify the schedule and supervise disposition of the tobacco products (and destruction of the stamps, if any), or he may authorize the manufacturer to dispose of the products (and destroy the stamps, if any) without supervision by so stating on the original and one copy of the schedule returned to the manufacturer.

[T.D. 6871, 31 FR 39, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

§ 40.313 Disposition of tobacco products and schedule.

When so authorized, as evidenced by the appropriate TTB officer's statement on the schedule, the manufacturer shall dispose of the tobacco products (and destroy the stamps, if any) as specified in the schedule. After the manufacturer has disposed of the products (and destroyed the stamps, if any), he shall execute a certificate on both copies of the schedule returned to him by the appropriate TTB officer, to show the disposition and the date of disposition of the products (and stamps, if any). In connection with a claim for allowance the manufacturer then shall return the original of the schedule to the appropriate TTB officer who authorized such disposition, who will cause such schedule to be associated with the claim, TTB F 5620.8, filed under § 40.282. In connection with a claim for credit or refund the manufacturer shall attach the original of the schedule to his claim for credit, TTB F 5620.8, or claim for refund, TTB F 5620.8, filed under § 40.283. When an appropriate TTB officer is assigned to

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verify the schedule and supervise disposition of the tobacco products, such officer shall, upon completion of his assignment, execute a certificate on all copies of the schedule to show the disposition and the date of disposition of the products. In connection with a claim for allowance the officer shall return one copy of the schedule to be included in the manufacturers records, and in connection with a claim for credit or refund, the officer shall return the original and one copy of the schedule to the manufacturer, the original of which the manufacturer shall attach to the claim, TTB F 5620.8, filed under § 40.283.

(72 Stat. 1419, as amended; 26 U.S.C. 5705)

[T.D. 6871, 31 FR 39, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987]

Subpart J—Suspension and Discontinuance of Operations by Manufacturers

§ 40.331 Discontinuance of operations.

Every manufacturer of tobacco products who desires to discontinue operations under this part shall dispose of all tobacco products on hand, in accordance with this part, and make a concluding inventory and concluding report in accordance with the provisions of § 40.201 and § 40.202, respectively. The manufacturer shall surrender his permit, with such inventory and report, to the appropriate TTB officer as notice of such discontinuance. The appropriate TTB officer may then terminate the liability of the surety on the bond of the manufacturer.

(72 Stat. 1422; 26 U.S.C. 5721, 5722)

[T.D. 6871, 37 FR 40, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

§ 40.332 Suspension and revocation of permit.

Where the appropriate TTB officer has reason to believe that a manufacturer of tobacco products has not in good faith complied with the provisions of 26 U.S.C. chapter 52, and regulations

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thereunder, or with any other provision of 26 U.S.C. with intent to defraud, or has violated any condition of his permit, or has failed to disclose any material information required or made any material false statement in the application for the permit, or has failed to maintain his premises in such manner as to protect the revenue, or is, by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with 26 U.S.C. chapter 52, or has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, the appropriate TTB officer shall issue an order, stating the facts charged, citing such person to show cause why his permit should not be suspended or revoked. Such citation shall be issued and opportunity for hearing afforded in accordance with part 71 of this chapter, which part is applicable to such proceedings. If, after hearing, the hearing examiner, or on appeal, the Administrator, finds that such person has not shown cause why his permit should not be suspended or revoked, such permit shall be suspended for such period as the appropriate TTB officer deems proper or shall be revoked.

(72 Stat 1421, as amended; 26 U.S.C. 5713)

[T.D. TTB-75, 74 FR 14483, Mar. 31, 2009]

Subpart K—Manufacture of Cigarette Papers and Tubes

SOURCE: T.D. ATF-384, 61 FR 54085, Oct. 17, 1996, unless otherwise noted.

TAXES

§ 40.351 Cigarette papers.

Cigarette papers are taxed at the following rates under 26 U.S.C. 5701(c):

Product	Tax rate for each 50 papers* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Cigarette papers up to 6½" long.	\$ 0.0122	\$ 0.0315

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Product	Tax rate for each 50 papers* for removals during the following periods:	
	2002 to March 31, 2009	April 1, 2009 and after
Cigarette papers over 6½" long.	Use rates above, but count each 2¾ inches, or fraction thereof, of the length of each as one cigarette paper.	

*Tax rate for less than 50 papers is the same. The tax is not prorated.

(72 Stat. 1414; 26 U.S.C. 5701)

[T.D. TTB-75, 74 FR 14483, Mar. 31, 2009]

§ 40.352 Cigarette tubes.

Cigarette tubes are taxed at the following rates under 26 U.S.C. 5701(d):

Product	Tax rate for each 50 tubes* for removals during the years:	
	2002 to March 31, 2009	April 1, 2009 and after
Cigarette tubes up to 6½" long.	\$ 0.0244	\$ 0.0630
Cigarette tubes over 6½" long.	Use rates above, but count each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube.	

*Tax rate for less than 50 tubes is the same. The tax is not prorated.

(72 Stat. 1414; 26 U.S.C. 5701)

[T.D. TTB-75, 74 FR 14483, Mar. 31, 2009]

§ 40.353 Persons liable for tax.

The manufacturer of cigarette papers and tubes shall be liable for the taxes imposed on such articles by 26 U.S.C. 5701. When a manufacturer of cigarette papers and tubes transfers such papers and tubes without payment of tax, pursuant to 26 U.S.C. 5704 to the bonded premises of another such manufacturer, a manufacturer of tobacco products, or an export warehouse proprietor, the transferee shall become liable for the tax upon receipt of such papers and tubes and the transferor shall thereupon be relieved of liability for the tax. When cigarette papers and tubes are released in bond from customs custody for transfer to the bonded premises of a manufacturer of such papers and tubes or a manufacturer of tobacco products, the transferee shall become liable for the tax on the papers and tubes upon release from customs custody. Any person who possesses cigarette papers and tubes in violation of 26 U.S.C. 5751(a) (1) or (2), shall be lia-

ble for a tax equal to the rate of tax applicable to such articles.

(72 Stat. 1417, 1424; 26 U.S.C. 5703, 5751)

§ 40.354 Determination of tax and method of payment.

Except for removals without payment of tax and transfers in bond, as authorized by law, no cigarette papers and tubes shall be removed until the taxes imposed by section 5701, I.R.C., have been determined. The payment of taxes on cigarette papers and tubes which are removed on determination of tax shall be made by return in accordance with the provisions of this subpart.

(72 Stat. 1417; 26 U.S.C. 5703)

§ 40.355 Return of manufacturer.

(a) *Requirement for filing.* A manufacturer of cigarette papers and tubes shall file, for each factory, a semi-monthly tax return on TTB Form 5000.24. A return shall be filed for each semimonthly return period regardless of whether cigarette papers and tubes were removed subject to tax or whether tax is due for that particular return period.

(b) *Waiver from filing.* The manufacturer need not file a return for each semimonthly return period if cigarette papers and tubes were not removed subject to tax during the period and the appropriate TTB officer has granted a waiver from filing in response to a written request from the manufacturer.

(c) *Semimonthly return periods.* Except as otherwise provided in paragraph (g) of this section, semimonthly return periods run from the 1st day of the month through the 15th day of that month, and from the 16th day of the month through the last day of that month.

(d) *Preparation and filing.* The return shall be executed and filed with TTB in accordance with the instructions on the form.

(e) *Remittance of tax.* Except as provided in § 40.357, remittance of the tax, if any, shall accompany the return.

(f) *Time for filing.* Except as otherwise provided in paragraph (g) of this section, for each semimonthly return period, the return shall be filed not later than the 14th day after the last day of

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the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday or legal holiday.

(g) *Special rule for taxes due for the month of September.* (1) *Division of second semimonthly period.* (i) *General.* Except as otherwise provided in paragraph (g)(1)(ii) of this section, the second semimonthly period for the month of September is divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 16–26, no later than September 29. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(ii) *Taxpayment not by electronic fund transfer.* In the case of taxes for which remittance by electronic fund transfer (EFT) is not required by § 40.357, the second semimonthly period of September is divided into two payment periods, from the 16th day through the 25th day, and from the 26th day through the 30th day. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 16–25, no later than September 28. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(2) *Amount of payment—Safe harbor rule.* (i) *General.* Taxpayers are considered to have met the requirements of paragraph (g)(1)(i) of this section if the amount paid no later than September 29 is not less than 11/15ths (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15th, and if any underpayment of tax is paid by October 14th.

(ii) *Taxpayment not by EFT.* Taxpayers are considered to have met the requirements of paragraph (g)(1)(ii) of this section if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending

on September 15, and if any underpayment of tax is paid by October 14.

(3) *Weekends and holidays.* If the required taxpayment due date for the period September 16–25 or September 16–26, as applicable, falls on a Saturday, or legal holiday, the return and remittance are due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance are due on the immediately following day.

(Approved by the Office of Management and Budget under Control Number 1512–0467)

[T.D. ATF–384, 61 FR 54085, Oct. 17, 1996, as amended by T.D. TTB–89, 76 FR 3514, Jan. 20, 2011]

§ 40.356 Adjustments in the return of manufacturer.

Adjustments may be made in Schedules A and B of the manufacturer's semimonthly tax return, TTB Form 5000.24, as provided in this section. Schedule A of the return will be used where an unintentional error in a previous return resulted in an underpayment of tax. Schedule B of the return will be used where an unintentional error in a previous return resulted in an overpayment of tax, or where notice has been received from the appropriate TTB officer that a claim for allowance of tax has been approved. In the case of an overpayment, the manufacturer shall have the option of filing a claim on TTB TTB F 5620.8 for refund or taking credit in Schedule B of the return, both subject to the period of limitations prescribed in 26 U.S.C. 6511. Any adjustment made in a return must be fully explained in the appropriate schedule or in a statement attached to and made a part of the return in which such adjustment is made.

(72 Stat. 1417, 68A Stat. 791; 26 U.S.C. 5703, 6402)

§ 40.357 Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 41 of this chapter, shall use a commercial

bank in making payment by electronic fund transfer (EFT) of taxes on tobacco products, cigarette papers, and cigarette tubes during the succeeding calendar year. Payment of taxes on tobacco products, cigarette papers, and cigarette tubes in any other form of remittance, as authorized in § 40.355, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including tobacco products, cigarette papers, and cigarette tubes brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR §§ 1.563-1 through 1.563-4. Also, the rules for a “controlled group of corporations” apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of determining who is required to make remittances by EFT.

(3) A taxpayer who is required by this section to make remittances by EFT shall make a separate EFT remittance and file a separate return, TTB Form 5000.24, for each factory from which cigarette papers or cigarette tubes are withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 41 of this chapter during the previous

calendar year, shall notify, in writing, the appropriate TTB officer. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the taxpayment to the Department of the Treasury's General Account or the Federal Reserve Bank of New York as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in § 40.355. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 41 of this chapter during the preceding calendar year, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 40.355. Upon filing the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the appropriate TTB officer by attaching a written notification to TTB Form 5000.24, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the return, TTB Form 5000.24, information about remitting the tax for that return period by EFT and shall file the return with TTB, in accordance with the instructions of TTB Form 5000.24.

(2) Remittances shall be considered as made when the taxpayment by EFT is received by the Treasury Account. For purposes of this section, a taxpayment by EFT shall be considered as received by the Treasury Account when it is paid to a Federal Reserve Bank.

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(3) When the taxpayer directs the bank to effect an EFT message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

(d) *Failure to make a taxpayment by EFT.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5761, 6651, or 6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the appropriate TTB officer will issue to the taxpayer an TTB Procedure entitled Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(Approved by the Office of Management and Budget under control number 1512-0457)

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 202, Pub. L. 85-859, 72 Stat. 1417, as amended (26 U.S.C. 5703))

[T.D. ATF-384, 61 FR 54085, Oct. 17, 1996, as amended by T.D. TTB-16, 69 FR 52423, Aug. 26, 2004; T.D. TTB-91, 76 FR 5480, Feb. 1, 2011]

§ 40.358 Assessment.

Whenever any person required by law to pay tax on cigarette papers and tubes fails to pay such tax, the tax shall be ascertained and assessed against such person, subject to the limitations prescribed in 26 U.S.C. 6501. The tax so assessed shall be in addition to the penalties imposed by law for failure to pay such tax when required. Except in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error, no such assessment shall be made until and after notice has been afforded such person to show cause against assessment. The person will be allowed 45 days from

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the date of such notice to show cause, in writing, against such assessment.

(72 Stat. 1417; 26 U.S.C. 5703)

§ 40.359 Employer identification number.

The employer identification number (EIN) (defined at 26 CFR 301.7701-12) of a manufacturer of cigarette papers and/or tubes who has been assigned such a number shall be shown on each semi-monthly tax return, TTB Form 5000.24, and special tax return (including amended returns), TTB Form 5630.5, filed under this subpart. Failure of the taxpayer to include the EIN on TTB Form 5000.24 may result in assertion and collection of the penalty specified in § 70.113 of this chapter. Failure of the taxpayer to include the EIN on TTB Form 5630.5 may result in the imposition of the penalty specified in 27 CFR 70.113 of this chapter.

(75 Stat. 828; 26 U.S.C. 6109, 6676)

§ 40.360 Application for employer identification number.

Each manufacturer of cigarette papers and tubes who has neither secured an EIN nor made application therefor shall file an application on IRS Form SS-4. IRS Form SS-4 may be obtained from any service center director or from any district director. Such application shall be filed on or before the seventh day after the date on which any tax return under this subpart is filed. Each manufacturer shall make application for and shall be assigned only one EIN for all internal revenue purposes.

(75 Stat. 828; 26 U.S.C. 6109)

§ 40.361 Execution and filing of Form SS-4.

The application on IRS form SS-4, together with any supplementary statement, shall be prepared in accordance with the applicable form, instructions, and regulations, and the data called for shall be set forth fully and clearly. The application shall be filed with the service center director serving the internal revenue district where the applicant is required to file returns under this subpart, except that hand-carried applications may be filed with

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the district director of any such district as provided for in 26 CFR § 301.6091-1. The application shall be signed by:

(a) The individual if the person is an individual;

(b) The president, vice president, or other principal officer if the person is a corporation;

(c) A responsible and duly authorized member or officer having knowledge of its affairs if the person is a partnership or other unincorporated organization; or

(d) The fiduciary if the person is a trust or estate.

(75 Stat. 828; 26 U.S.C. 6109)

SPECIAL (OCCUPATIONAL) TAXES

§ 40.371 Liability for special tax.

(a) *Manufacturer of cigarette papers and tubes.* Every manufacturer of cigarette papers and tubes shall pay a special (occupational) tax at a rate specified by § 40.372 of this part. The tax shall be paid on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Each place of business taxable.* A manufacturer of cigarette papers and tubes incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(c) *Payment of tax.* Special tax must be paid by return. The prescribed return is TTB Form 5630.5t, Special Tax Registration and Return—Tobacco. Special tax returns, with payment of tax, must be filed with TTB in accordance with the instructions on the form

and the requirements of subpart D of part 46 of this chapter.

(26 U.S.C. 5731, 5733)

[T.D. ATF-384, 61 FR 54085, Oct. 17, 1996, as amended by T.D. TTB-79, 74 FR 37419, July 28, 2009]

§ 40.372 Rate of special tax.

(a) *General.* Title 26 U.S.C. 5731(a)(2) imposes a special tax of \$1,000 per year on every manufacturer of cigarette papers and tubes.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5731(b) provides for a reduced rate of \$500 per year with respect to any manufacturer of cigarette papers and tubes whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 40.371 relates) are less than \$500,000. The “taxable year” to be used for determining gross receipts is the taxpayer’s income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a “controlled group”; in that case the rules of paragraph (c) of this section shall apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. “Controlled group” means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4. Also, the rules for a “controlled group of corporations” apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

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(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5731)

§ 40.373 Cross reference.

For additional rules pertaining to liability for special tax, filing special tax returns, issuance and examination of special tax stamps, and notification of changes to special tax stamps, see subpart D of part 46 of this chapter.

[T.D. TTB-79, 74 FR 37419, July 28, 2009]

§§ 40.374–40.375 [Reserved]

GENERAL

§ 40.382 Authority of TTB officers to enter premises.

The appropriate TTB officer may enter in the daytime any premises where cigarette papers and tubes are produced or kept, so far as it may be necessary for the purpose of examining such articles. When such premises are open at night, the appropriate TTB officer may enter them, while so open, in the performance of his or her official duties. The owner of such premises, or person having the superintendence of the same, who refuses to admit the appropriate TTB officer or permit the appropriate TTB officer to examine such cigarette papers and tubes shall be liable to the penalties prescribed by law for the offense.

(68A Stat. 872; 903 26 U.S.C. 7342, 7606)

§ 40.383 Interference with administration.

Whoever, corruptly or by force or threats of force, endeavors to hinder or obstruct the administration of this subpart, or endeavors to intimidate or impede any TTB officer acting in an official capacity, or forcibly rescues or attempts to rescue or causes to be rescued any property, after it has been

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duly seized for forfeiture to the United States in connection with a violation or intended violation of this subpart, shall be liable to the penalties prescribed by law.

(68A Stat. 855; 26 U.S.C. 7212)

§ 40.384 Disposal of forfeited, condemned, and abandoned cigarette papers and tubes.

Forfeited, condemned, or abandoned cigarette papers or tubes in the custody of a Federal, State, or local officer upon which the Federal tax has not been paid shall not be sold or caused to be sold for consumption in the United States if, in the opinion of the officer, the sale of such papers and tubes will not bring a price equal to the tax due and payable, and the expenses incident to the sale. Where the cigarette papers or tubes are not sold the officer may deliver them to a Federal or State institution (if they are fit for consumption) or cause their destruction by burning completely or by rendering them unfit for consumption. Where such papers or tubes are sold, release by the officer having custody shall be made only after such papers and tubes are properly packaged and taxpaid. A receipt from the appropriate TTB officer evidencing payment of tax on such papers or tubes shall be presented to the officer having custody of the articles, which tax shall be considered part of the sales price. Where cigarette papers or tubes which have been packaged under the provisions of part 45 of this chapter are to be released after payment of tax, the purchaser shall appropriately mark each package “Federal Tax Paid (date)” before the officer having custody of the papers or tubes releases them. However, the articles may be released without such marking of the packages if the purchaser is a qualified manufacturer of cigarette papers and tubes and does not intend to place such papers or tubes on the domestic market for taxable articles but will otherwise dispose of them. A written statement of notification of disposal by destruction or return to bond through claim for refund, shall be filed, in original only, with the officer having custody of the articles. In the case of cigarette papers and tubes forfeited under the internal revenue laws, the

sale shall be subject to the provisions of part 72 of this chapter.

(68A Stat. 870, as amended, 72 Stat. 1425, as amended; 26 U.S.C. 7325, 5753)

[26 FR 8174, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated at 54 FR 48839, Nov. 27, 1989, and further redesignated by T.D. ATF-460, 66 FR 39093, July 27, 2001, as amended by T.D. ATF-469, 66 FR 56758, Nov. 13, 2001]

§ 40.385 Alternate methods or procedures.

A manufacturer of cigarette papers and tubes, on specific approval by the appropriate TTB officer as provided in this section, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this subpart. The appropriate TTB officer may approve an alternate method or procedure, subject to stated conditions, when the appropriate TTB officer finds that—

(a) Good cause has been shown for the use of the alternate method or procedure,

(b) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and affords equivalent security to the revenue, and

(c) The alternate method or procedure will not be contrary to any provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of this subpart.

No alternate method or procedure relating to the giving of any bond or to the assessment, payment, or collection of tax, shall be authorized under this section. A manufacturer who desires to employ an alternate method or procedure shall submit a written application, in triplicate, to the appropriate TTB officer. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the appropriate TTB officer. The manufacturer shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method

or procedure may be withdrawn whenever, in the judgment of the appropriate TTB officer, the revenue is jeopardized or the effective administration of this part is hindered. Any authorization of the appropriate TTB officer under this section shall be retained as part of the manufacturer's record in accordance with this subpart.

§ 40.386 Emergency variations from requirements.

The appropriate TTB officer may approve methods of operation other than as specified in this subpart, where it is determined that an emergency exists and the proposed variations from the specified requirements are necessary, and the proposed variations—

(a) Will afford the security and protection to the revenue intended by the prescribed specifications;

(b) Will not hinder the effective administration of this subpart; and

(c) Will not be contrary to any provision of law. Variations from requirements granted under this section are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions and limitations shall automatically terminate the authority for such variations and the manufacturer thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever in the judgment of the appropriate TTB officer the revenue is jeopardized or the effective administration of this subpart is hindered by the continuation of such variation. Where a manufacturer desires to employ such variation, the manufacturer shall submit a written application to do so (in triplicate) to the appropriate TTB officer. The application shall describe the proposed variations and set forth the reasons therefor. Variations shall not be employed until the application has been approved. In accordance with this subpart, any authorization of the appropriate TTB officer under this section shall be retained as part of the manufacturer's records.

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§ 40.387 Penalties and forfeitures.

Anyone who fails to comply with the provisions of this subpart becomes liable to the civil and criminal penalties, and forfeitures, provided by law.

(72 Stat. 1425, 1426; 26 U.S.C. 5761, 5762, 5763)

QUALIFICATION REQUIREMENTS FOR MANUFACTURERS

Original Qualifications

§ 40.391 Persons required to qualify.

Every person who manufactures cigarette paper, or makes up cigarette paper into tubes, except for his own personal use or consumption, must first qualify as a manufacturer of cigarette papers and tubes in accordance with the provisions of this subpart.

[ATF-467, 66 FR 49532, Sept. 28, 2001]

§ 40.392 Bond.

Every person, before commencing business as a manufacturer of cigarette papers and tubes, shall file a bond on TTB F 5200.25 or 5200.26. Such bond shall be filed in accordance with the applicable provisions of §§ 40.401 through 40.410 and conditioned upon compliance with the provisions of 26 U.S.C. Chapter 52, and regulations thereunder, including, but not limited to, the timely payment of taxes imposed by such chapter and penalties and interest in connection therewith for which the manufacturer may become liable to the United States.

(72 Stat. 1421; 26 U.S.C. 5711)

[T.D. ATF-384, 61 FR 54085, Oct. 17, 1996, as amended by T.D. TTB-91, 76 FR 5480, Feb. 1, 2011]

§ 40.393 Power of attorney.

If the bond or any other document required under this part is signed by an attorney in fact for an individual, partnership, association, company, or corporation, by one of the partners for a partnership, or by one of the members of an association, a power of attorney on TTB F 5000.8 shall be furnished to the appropriate TTB officer. If such bond or other document is signed on behalf of a corporation by an officer thereof, it must be supported by duly authenticated extracts of the stock-

holders' meeting, by-laws, or directors' meeting authorizing such officer to execute such document for the corporation. TTB F 5000.8 or support of authority does not have to be filed again with a appropriate TTB officer where such form or support has previously been submitted to that appropriate TTB officer and is still in effect.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 40.394 Notice of approval of bond.

If the bond required under this subpart is approved by the appropriate TTB officer, a number will be assigned to the factory of the manufacturer of cigarette papers and tubes for internal revenue purposes. The appropriate TTB officer will immediately notify the manufacturer, in writing, of the bond approval, in order that the manufacturer may commence operations.

(72 Stat. 1421; 26 U.S.C. 5711)

Changes after Original Qualifications

§ 40.395 Change in name.

Where there is a change in the individual, trade, or corporate name of a manufacturer of cigarette papers and tubes, the manufacturer shall, within 30 days of the change, furnish the appropriate TTB officer a written notice of such change.

(72 Stat. 1422; 26 U.S.C. 5722)

§ 40.396 Change in proprietorship.

Where there is to be any change in proprietorship (including a change in the identity of the members of a partnership or association, but excluding any change in stock ownership in a corporation) of the business of a manufacturer of cigarette papers and tubes, the proposed successor shall, before commencing operations, qualify as a manufacturer of cigarette papers and tubes, in accordance with this part. If such manufacturer promptly files the required documentation with the appropriate TTB officer, an administrator, executor, receiver, trustee, assignee, or other fiduciary successor may liquidate the business without qualifying as a manufacturer. The manufacturer must promptly file with

the appropriate TTB officer a statement of the intent to liquidate and furnish a certified copy of the order of the court, or other pertinent documents. These documents must show the appointment and qualification of any administrator, executor, receiver, trustee, assignee, or other fiduciary, together with an extension of coverage of the predecessor's bond executed by the administrator, executor, receiver, trustee, assignee, or other fiduciary and the surety, in accordance with the provisions of § 40.407. The predecessor shall make a closing inventory and closing report in accordance with the provisions of §§ 40.434 and 40.426, respectively, and the successor shall make an opening inventory and opening report, in accordance with the provision of §§ 40.432 and 40.423, respectively.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5721, and 5722)

§ 40.397 Change in location.

Whenever a manufacturer of cigarette papers and tubes contemplates a change in location of a factory within the same region, the manufacturer shall, before commencing operations at the new location, file an extension of coverage of bond in accordance with the provisions of § 40.407. Whenever a manufacturer of cigarette papers and tubes contemplates changing the location of a factory to another region, the manufacturer shall, before commencing operations at the new location, qualify as a manufacturer in the new region, in accordance with the applicable provisions of this subpart, and make a closing inventory and closing report, in accordance with the provisions of §§ 40.434 and 40.426, respectively.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5721, and 5722)

Bonds and Extensions of Coverage of Bonds

§ 40.401 Corporate surety.

(a) Surety bonds required by this subpart may be given only with corporate sureties holding certificates of authority from, and subject to any limitations prescribed by the Secretary of the Treasury as set forth in the current revision of Treasury Department Cir-

cular No. 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies). The surety shall have no interest whatever in the business covered by the bond.

(b) Each bond and each extension of coverage of bond shall at the time of filing be accompanied by a power of attorney authorizing the agent or officer who executed the bond to so act on behalf of the surety. The appropriate TTB officer who is authorized to approve the bond may, whenever deemed necessary, require additional evidence of the authority of the agent or officer to execute the bond or extension of coverage of bond. The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is other than a manually signed document, it shall be accompanied by a certificate of its validity.

(c) Treasury Department Circular No. 570 is published in the FEDERAL REGISTER annually as of the first workday in July. As they occur, interim revisions of the circular are published in the FEDERAL REGISTER. Copies may be obtained from the Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, D.C. 20220.

(July 30, 1947, ch. 390, 61 Stat. 648, as amended (31 U.S.C. 9304, 9306); sec. 202, Pub. L. 85-859, 72 Stat. 1421, as amended (26 U.S.C. 5711))

§ 40.402 Two or more corporate sureties.

A bond executed by two or more corporate sureties shall be the joint and several liability of the principal and the sureties. However, each corporate surety may limit its liability in terms upon the face of the bond in a definite, specific amount, which amount shall not exceed the limitations prescribed for such corporate surety by the Secretary, as set forth in the current revision of Treasury Department Circular 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies). (See § 40.401(c))

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When the sureties so limit their liability, the aggregate of such limited liabilities must equal the required amount of the bond.

(July 30, 1947, ch. 390, 61 Stat. 648, as amended (31 U.S.C. 9304, 9306); sec. 202, Pub. L. 85-859, 72 Stat. 1421, as amended (26 U.S.C. 5711))

§ 40.403 Deposit of securities in lieu of corporate surety.

In lieu of corporate surety, the manufacturer of cigarette papers and tubes may pledge and deposit, as security for the bond, securities which are transferable and are guaranteed as to both interest and principal by the United States, in accordance with the provisions of 31 CFR Part 225—Acceptance of Bonds, Notes or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

(61 Stat. 650, 72 Stat. 1421, 31 U.S.C. 9301, 9303, 26 U.S.C. 5711, 5 U.S.C. 552(a) (80 Stat. 383, as amended))

§ 40.404 Amount of bond.

The amount of the bond of a manufacturer of cigarette papers and tubes shall be not less than the maximum amount of the tax liability on the cigarette papers and tubes manufactured in the factory, received without payment of tax from other factories, and released without payment of tax from customs custody as provided in § 40.452, during any month. In the case of a manufacturer commencing business, the production, receipts from other factories, and releases from customs custody, without payment of tax, shall be estimated for the purpose of this section. The amount of any such bond (or the total amount where strengthening bonds are filed) shall not exceed \$20,000, nor be less than \$1,000.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 40.405 Strengthening bond.

Where the appropriate TTB officer determines that the amount of the bond, under which a manufacturer of cigarette papers and tubes is currently carrying on such business, no longer adequately protects the revenue, the appropriate TTB officer may require the manufacturer to file a strengthening bond in an appropriate amount

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with the same surety as that on the bond already in effect, in lieu of a superseding bond to cover the full liability on the basis of § 40.404. The appropriate TTB officer shall refuse to approve any strengthening bond where any notation is made thereon which is intended or which may be construed as a release of any former bond, or as limiting the amount of either bond to less than its full amount.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 40.406 Superseding bond.

A manufacturer of cigarette papers and tubes shall file a new bond to supersede the current bond immediately when:

(a) The corporate surety on the current bond becomes insolvent,

(b) The appropriate TTB officer approves a request from the surety of the current bond to terminate liability under the bond,

(c) Payment of any liability under a bond is made by the surety thereon, or

(d) The appropriate TTB officer considers such a superseding bond necessary for the protection of the revenue.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 40.407 Extension of coverage of bond.

An extension of the coverage of bond filed under this subpart shall be manifested on TTB F 5000.18, Extension of Coverage of Bond, by the manufacturer of cigarette papers and tubes and by the surety on the bond with the same formality and proof of authority as required for the execution of the bond.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 40.408 Approval of bond and extension of coverage of bond.

No person shall commence operations under any bond, nor extend operations, until such person receives from the appropriate TTB officer notice of approval of the bond or an appropriate extension of coverage of the bond required under this subpart. Upon receipt of an approved bond or extension of coverage of bond from the appropriate TTB officer, such bond or extension of coverage of bond shall be retained by the manufacturer of cigarette papers and tubes in factory and shall be made

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available for inspection by any TTB officer upon request.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 40.409 Termination of liability of surety under bond.

The liability of a surety on any bond required by this subpart shall be terminated only as to operations on and after the effective date of a superseding bond, or the date of approval of the discontinuance of operations by the manufacturer of cigarette papers and tubes, or otherwise in accordance with the termination provisions of the bond. The surety shall remain bound in respect of any liability for unpaid taxes, penalties and interest, not in excess of the amount of the bond, incurred by the manufacturer while the bond is in force.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 40.410 Release of pledged securities.

Securities of the United States pledged and deposited as provided in § 40.403 shall be released only in accordance with the provisions of 31 CFR part 225. Such securities will not be released by the appropriate TTB officer until liability under the bond for which they were pledged has been terminated. When the appropriate TTB officer is satisfied that they may be released, the appropriate TTB officer shall fix the date or dates on which a part or all of such securities may be released. At any time prior to the release of such securities, the appropriate TTB officer may extend the date of release for such additional length of time as is deemed necessary.

(61 Stat. 650, 72 Stat. 1421; 31 U.S.C. 9301, 9303; 26 U.S.C. 5711)

OPERATIONS BY MANUFACTURERS

Records

§ 40.421 General.

(a) Every manufacturer of cigarette papers and tubes must keep records of daily operations and transactions. Records maintained must reflect the date and number of cigarette papers and the date and number of cigarette tubes:

- (1) Manufactured;

(2) Received, without payment of tax from another factory, an export warehouse, customs custody, or by withdrawal from the market;

(3) Removed, subject to tax;

(4) Removed, without payment of tax, for export purposes, use of the United States or transfer in bond pursuant to § 40.451; or

(5) Lost or destroyed.

(b) The entries for each day in the records maintained or kept under this subpart must be made by the close of the business day following that on which the operations or transactions occur. No particular form of records is prescribed, but the information required must be readily ascertainable from the records kept.

(c) Records maintained under this section prior to January 1, 2000, must reflect the date and number of books or sets of cigarette papers of each different numerical content and the date and number of cigarette tubes.

(26 U.S.C. 5741.)

[T.D. ATF-240, 64 FR 71941, Dec. 22, 1999]

Reports

§ 40.422 General.

Every manufacturer of cigarette papers and tubes must prepare a report on TTB Form 5230.3 in accordance with instructions for the form. The report must be prepared at the times specified in this subpart and must be prepared whether or not any operations or transactions occurred during the period covered by the report. The manufacturer must retain a copy of each report in accordance with the provisions of this subpart.

(a) *Reports for periods on or after January 1, 2000.* Reports submitted must reflect the total number of cigarette papers and cigarette tubes manufactured, received and lost or destroyed.

(b) *Reports for periods prior to January 1, 2000.* Reports submitted must reflect the number of books or sets of cigarette papers of each different numerical content and the number of cigarette tubes manufactured, received, removed and lost or destroyed.

(26 U.S.C. 5722)

[T.D. ATF-240, 64 FR 71942, Dec. 22, 1999]

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§ 40.423 Opening.

An opening report, covering the period from the date of the opening inventory to the end of the month, shall be made on or before the 10th day following the end of the month in which the business was commenced.

(72 Stat. 1422; 26 U.S.C. 5722)

§ 40.424 Monthly.

A report for each calendar month shall be made on or before the 20th day of the next succeeding month.

(72 Stat. 1422; 26 U.S.C. 5722)

§ 40.425 Special.

A special report, covering the unreported period to the day preceding the date of any special inventory required by an appropriate TTB officer, shall be made with such inventory. Another report, covering the period from the date of the special inventory to the end of the month, shall be made on or before the 14th day following the end of the month in which the inventory was made.

(72 Stat. 1422; 26 U.S.C. 5722)

§ 40.426 Closing.

A closing report, covering the period from the first of the month to the date of the closing inventory, shall be made with such inventory.

(72 Stat. 1422; 26 U.S.C. 5722)

Inventories

§ 40.431 General.

Every manufacturer of cigarette papers and tubes must provide a true and accurate inventory on TTB Form 5230.2 in accordance with instructions for the form. Such inventory is subject to verification by the appropriate TTB officer. The manufacturer must retain a copy of each inventory completed on TTB Form 5230.2 in accordance with this subpart.

(a) *Reports of inventory for periods on or after January 1, 2000.* Reports of inventory submitted must reflect the total number of cigarette papers and cigarette tubes held at the times specified in the subpart.

(b) *Reports of inventory for periods prior to January 1, 2000.* Reports of in-

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ventory submitted must reflect the number of books or sets of cigarette papers of each different numerical content and the number of cigarette tubes held at the times specified in this subpart.

(26 U.S.C. 5721)

[T.D. ATF-240, 64 FR 71942, Dec. 22, 1999]

§ 40.432 Opening.

An opening inventory shall be made by the manufacturer of cigarette papers and tubes at the time of first commencing business.

(72 Stat. 1422; 26 U.S.C. 5721)

§ 40.433 Special.

A special inventory shall be made by the manufacturer of cigarette papers and tubes when required by the appropriate TTB officer.

(72 Stat. 1422; 26 U.S.C. 5721)

§ 40.434 Closing.

A closing inventory shall be made by the manufacturer of cigarette papers and tubes when a change in proprietorship occurs, or when the manufacturer changes location of the factory to another region, or concludes business. Where a change in proprietorship occurs, the closing inventory shall be made as of the day preceding the date of the opening inventory of the successor.

(72 Stat. 1422; 26 U.S.C. 5721)

Document Retention

§ 40.435 General.

All records and reports required to be kept or maintained under this subpart, including copies of authorizations, inventories, reports, returns, and claims filed with verified supporting schedules, shall be retained by the manufacturer for three years following the close of the calendar year in which filed or made, or in the case of an authorization, for three years following the close of the calendar year in which the operation under such authorization is concluded. Such records shall be made available for inspection by the appropriate TTB officer upon request.

(72 Stat. 1423; 26 U.S.C. 5741)

*Packages***§ 40.441 General.**

All cigarette papers and tubes shall, before removal subject to tax, be put up by the manufacturer in packages which shall be of such construction as will securely contain the papers or tubes therein. No package of cigarette papers or tubes shall have contained therein, attached thereto, or stamped, marked, written, or printed thereon:

(a) Any certificate, coupon, or other device purporting to be or to represent a ticket, chance, share, or an interest in, or dependent on, the event of a lottery,

(b) Any indecent or immoral picture, print, or representation, or

(c) Any statement or indication that United States tax has been paid.

(72 Stat. 1422; 26 U.S.C. 5723)

*Miscellaneous Operations***§ 40.451 Transfer in bond.**

A manufacturer of cigarette papers and tubes may transfer such papers and tubes, under bond, without payment of tax, to the bonded premises of any manufacturer of cigarette papers and tubes, or to the bonded premises of a manufacturer of tobacco products solely for use in the manufacture of cigarettes. The transfer of cigarette papers and tubes, without payment of tax, to the bonded premises of an export warehouse proprietor shall be in accordance with the provisions of part 44 of this chapter.

(72 Stat. 1418, as amended; 26 U.S.C. 5704)

§ 40.452 Release from customs custody.

Cigarette papers and tubes which were made in the United States, exported, and subsequently returned to the United States, may be removed from customs custody for transfer to the premises of a manufacturer without payment of the internal revenue tax, upon compliance with part 41 of this chapter.

(72 Stat. 1418; 26 U.S.C. 5704)

[T.D. ATF-384, 61 FR 54085, Oct. 17, 1996, as amended by T.D. TTB-16, 69 FR 52423, Aug. 26, 2004]

§ 40.453 Use of the United States.

A manufacturer of cigarette papers and tubes may remove cigarette papers and tubes covered under bond, without payment of tax, for use of the United States. Such removal shall be in accordance with the provisions of part 45 of this chapter.

(72 Stat. 1418; 26 U.S.C. 5704)

[26 FR 8174, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated at 54 FR 48839, Nov. 27, 1989, and further redesignated by T.D. ATF-460, 66 FR 39093, July 27, 2001, as amended by T.D. ATF-469, 66 FR 56758, Nov. 13, 2001]

§ 40.454 Removal for export purposes.

The removal of cigarette papers and tubes, without payment of tax, for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States, shall be in accordance with the provisions of part 44 of this chapter.

(72 Stat. 1418; 26 U.S.C. 5704)

*Permanent Discontinuance of Business***§ 40.461 Discontinuance of operations.**

Every manufacturer of cigarette papers and tubes who desires to discontinue operations and close out a factory shall dispose of all cigarette papers and tubes on hand, in accordance with this subpart, and make a closing inventory and closing report, in accordance with the provisions of §§ 40.434 and 40.426, respectively.

(72 Stat. 1422; 26 U.S.C. 5721, 5722)

CLAIMS BY MANUFACTURERS

*General***§ 40.471 Abatement.**

A claim for abatement of the unpaid portion of the assessment of any tax on cigarette papers and tubes, or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after the expiration of the applicable period of limitation, or is erroneously or illegally assessed. Any claim under this section shall be prepared on TTB F 5620.8, in duplicate,

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and shall set forth the particulars under which the claim is filed. The original of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the appropriate TTB officer that the claim is valid, shall be filed with the appropriate TTB officer.

(68A Stat. 792, 6404)

§ 40.472 Allowance.

Relief from the payment of tax on cigarette papers and tubes may be extended to a manufacturer by allowance of the tax where the cigarette papers and tubes, after removal from the factory upon determination of tax and prior to the payment of such tax, are lost (otherwise than by theft) or destroyed by fire, casualty, or act of God, while in the possession or ownership of the manufacturer who removed such articles, or are withdrawn by the manufacturer from the market. Any claim for allowance under this section shall be filed on TTB F 5620.8 with the appropriate TTB officer, shall be executed under penalties and perjury and shall show the date the cigarette papers and tubes were removed from the factory. A claim relating to articles lost or destroyed shall be supported as prescribed in § 40.475. In the case of a claim relating to cigarette papers or tubes withdrawn from the market the schedule prescribed in § 40.476 shall be filed with the appropriate TTB officer. The manufacturer may not anticipate allowance of a claim by making the adjusting entry in a tax return pending consideration and action on the claim. Cigarette papers and tubes to which such a claim relates must be shown as removed on determination of tax in the return covering the period during which such articles were so removed. Upon action on the claim by the appropriate TTB officer a copy of TTB F 5620.8 will be returned to the manufacturer as notice of such action. This copy of TTB F 5620.8, with the copy of any verified supporting schedules, shall be retained by the manufacturer. When such notification of allowance of the claim or any part thereof is received prior to the time the return covering the tax on the cigarette papers or tubes to which the claim relates is to be filed, the manufacturer may make an

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adjusting entry and explanatory statement in that tax return. Where the notice of allowance is received after the filing of the return and taxpayment of the cigarette papers or tubes to which the claim relates, the manufacturer may make an adjusting entry and explanatory statement in the next tax return(s) to the extent necessary to take credit in the amount of the allowance.

(72 Stat. 1419, as amended, 26 U.S.C. 5705)

§ 40.473 Credit or refund.

The taxes paid on cigarette papers and tubes may be credited or refunded (without interest) to a manufacturer on proof satisfactory to the appropriate TTB officer that the claimant manufacturer paid the tax on cigarette papers and tubes lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such manufacturer, or withdrawn by the manufacturer from the market. Any claim for credit or refund under this section shall be prepared on TTB F 5620.8, in duplicate. Claims shall include a statement that the tax imposed on cigarette papers and tubes by 26 U.S.C. 7652 or Chapter 52, was paid in respect to the cigarette papers or tubes covered by the claim, and that the articles were lost, destroyed, or withdrawn from the market within 6 months preceding the date the claim is filed. A claim for credit or refund relating to articles lost or destroyed shall be supported as prescribed in § 40.475, and a claim relating to articles withdrawn from the market shall be accompanied by a schedule prepared and verified as prescribed in §§ 40.476, and 40.477. The original and one copy of TTB F 5620.8, shall be filed with the appropriate TTB officer. Upon action by the appropriate TTB officer on a claim for credit, a copy of TTB F 5620.8 will be returned to the manufacturer as notification of allowance or disallowance of the claim or any part thereof. This copy, with the copy of any verified supporting schedules, shall be retained by the manufacturer. When the manufacturer is notified of allowance of the claim for credit or any part thereof, the manufacturer shall make an adjusting entry and explanatory statement in the next tax return(s) to the extent necessary to take

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credit in the amount of the allowance. The manufacturer may not anticipate allowance of a claim by taking credit on a tax return prior to consideration and action on such claim. The duplicate of a claim for refund or credit, with a copy of any verified supporting schedules, shall be retained by the manufacturer.

(72 Stat. 1419, as amended, 26 U.S.C. 5705)

§ 40.474 Remission.

Remission of the tax liability on cigarette papers and tubes may be extended to the manufacturer liable for the tax where cigarette papers and tubes in bond are lost (other than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such manufacturer. Where cigarette papers and tubes are so lost or destroyed the manufacturer shall report promptly such fact, and the circumstances, to the appropriate TTB officer. If the manufacturer wishes to be relieved of the tax liability, a claim on TTB F 5620.8, in duplicate, shall also be prepared, setting forth the nature, date, place, and extent of the loss or destruction. The original and one copy of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the appropriate TTB officer that the claim is valid, shall be filed with the appropriate TTB officer. Upon action on the claim by the appropriate TTB officer, the copy of TTB F 5620.8 will be returned to the manufacturer as notice of such action, which copy shall be retained by the manufacturer.

(72 Stat. 1419, as amended, 26 U.S.C. 5707)

Lost or Destroyed

§ 40.475 Action by claimant.

Where cigarette papers and tubes are lost (other than by theft) or destroyed, by fire, casualty, or act of God, and the manufacturer desires to file claim under the provisions of § 40.472 or § 40.473, the manufacturer shall indicate on the claim the nature, date, and extent of such loss or destruction. The claim shall be accompanied by such evidence as necessary to establish to

the satisfaction of the appropriate TTB officer that the claim is valid.

(72 Stat. 1419; 26 U.S.C. 5705)

Withdrawn From the Market.

§ 40.476 Action by claimant.

Where cigarette papers and tubes are withdrawn from the market and the manufacturer desires to file claim under the provisions of § 40.472 or § 40.473, the manufacturer shall assemble the articles in or adjacent to a factory if they are to be retained in or received into such factory, or at any suitable place if they are to be destroyed. The manufacturer shall group the articles according to the rate of tax applicable thereto, and shall prepare and submit a schedule of the articles, on TTB Form 5200.7 in accordance with the instructions, on the form. All copies of the schedule shall be forwarded to the appropriate TTB officer.

(72 Stat. 1419; 26 U.S.C. 5705)

[T.D. ATF-384, 61 FR 54085, Oct. 17, 1996, as amended by T.D. ATF-424, 64 FR 71932, Dec. 22, 1999]

§ 40.477 Action by the appropriate TTB officer.

Upon receipt of a schedule of cigarette papers and tubes withdrawn from the market, the appropriate TTB officer may assign a TTB officer to verify the schedule and supervise disposition of the cigarette papers and tubes, or may authorize the manufacturer to dispose of the articles without supervision by so stating on the original and one copy of the schedule returned to the manufacturer.

(72 Stat. 1419; 26 U.S.C. 5705)

§ 40.478 Disposition of cigarette papers and tubes and schedule.

When so authorized, as evidenced by the appropriate TTB officer's statement on the schedule, the manufacturer shall dispose of the cigarette papers and tubes as specified in the schedule. After the articles are disposed of, the manufacturer shall execute a certificate on both copies of the schedule received from the appropriate TTB officer, to show the disposition and the date of disposition of the articles. In connection with a claim for

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credit or refund, the manufacturer shall attach the original of the schedule to the claim for credit or refund, TTB F 5620.8, filed under § 40.473. When an appropriate TTB officer is assigned to verify the schedule and supervise disposition of the cigarette papers and tubes, such officer shall, upon completion of the assignment, execute a certificate on all copies of the schedule to show the disposition and the date of disposition of the articles. In connection with a claim for allowance, the officer shall return one copy of the schedule to the manufacturer for the record, and in connection with a claim for credit or refund, the officer shall return the original and one copy of the schedule to the manufacturer, the original of which the manufacturer shall attach to the claim filed under § 40.473.

(72 Stat. 1419, as amended; 26 U.S.C. 26 U.S.C. 5705)

Subpart L—Manufacture of Processed Tobacco

SOURCE: T.D. TTB-78, 74 FR 29410, June 22, 2009, unless otherwise noted.

QUALIFICATION REQUIREMENTS FOR MANUFACTURERS OF PROCESSED TOBACCO

§ 40.491 Persons required to qualify.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, every person who engages in the processing of tobacco must first qualify for and receive a permit as a manufacturer of processed tobacco in accordance with the provisions of this subpart.

(b) *Exceptions.* (1) A person who engages in the processing of tobacco solely for his own personal use or consumption and not for sale or transfer to another person is not engaged in the manufacture of processed tobacco for purposes of this part and, accordingly, is not required to qualify as a manufacturer of processed tobacco.

(2) Any person who holds a TTB permit for the manufacture of tobacco products is thereby authorized to process tobacco solely for use in the manufacture of tobacco products under that permit, so long as the processed tobacco is not removed from the factory for any purpose other than destruction.

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Such a manufacturer is not required to qualify under this subpart as a manufacturer of processed tobacco.

(3) Any person that holds a TTB permit for the manufacture of tobacco products and that removes processed tobacco from the factory must apply for authorization to engage in that activity, when required to do so under § 40.47.

[T.D. TTB-78, 74 FR 29410, June 22, 2009, as amended by T.D. TTB-104, 77 FR 37304, June 21, 2012]

§ 40.492 Application for permit.

The application for a permit as a manufacturer of processed tobacco must be made on TTB F 5200.3, according to the instructions on the form. All documents required under this subpart to be furnished with the application must be included with the application.

§ 40.493 Transitional rule.

(a) Any person who:

(1) On April 1, 2009, is engaged in business as a manufacturer of processed tobacco; and

(2) On or before June 30, 2009, submits an application for a permit or authorization as provided in this part to engage in such business, may continue to engage in that business pending final action on the application.

(b) Pending final action on an application or request for authorization submitted under paragraph (a) of this section, all provisions of chapter 52 of the Internal Revenue Code of 1986 shall apply to the applicant in the same manner and to the same extent as if the applicant were a holder of a permit to manufacture processed tobacco under chapter 52.

(c) Upon receipt of an application, the appropriate TTB officer will provide the applicant with a written acknowledgement that may be used for a limited period as confirmation of TTB authorization to engage in the business of a manufacturer of processed tobacco.

[T.D. TTB-78, 74 FR 29410, June 22, 2009, as amended by T.D. TTB-80, 74 FR 37552, July 29, 2009]

§ 40.494 Corporate documents.

Every corporation that files an application for a permit as a manufacturer

of processed tobacco must furnish with its application for the permit required by § 40.492 a true copy of the corporate charter or a certificate of corporate existence or incorporation executed by the appropriate officer of the State in which incorporated. The corporation must likewise furnish duly authenticated extracts of the stockholders' meetings, bylaws, or directors' meetings, listing the offices the incumbents of which are authorized to sign documents or otherwise act in behalf of the corporation in matters relating to 26 U.S.C. chapter 52, and regulations issued thereunder. The corporation must also furnish evidence, in duplicate, of the identity of the officers and directors and each person who holds more than ten percent of the stock of such corporation. Where any of the information required by this section has previously been filed with the appropriate TTB officer and such information is currently complete and accurate, a written statement to that effect, in duplicate, will be sufficient for the purpose of this section.

§ 40.495 Articles of partnership or association.

Every partnership or association that files an application for a permit as a manufacturer of processed tobacco must furnish with its application for the permit required by § 40.492 a true copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county, or municipality. Where a partnership or association has previously filed such documents with the appropriate TTB officer and such documents are currently complete and accurate, a written statement, in duplicate, to that effect by the partnership or association will be sufficient for the purpose of this section.

§ 40.496 Trade name certificate.

Every person that files an application for a permit as a manufacturer of processed tobacco operating under a trade name must furnish with the application for the permit required by § 40.492 a true copy of the certificate or other document, if any, issued by a State, county, or municipal authority

in connection with the transaction of business under such trade name. If no such certificate or other document is so required, a written statement, in duplicate, to that effect by such person will be sufficient for the purpose of this section.

[T.D. TTB-78, 74 FR 29410, June 22, 2009, as amended by T.D. TTB-80, 74 FR 37552, July 29, 2009]

§ 40.497 Additional information.

The appropriate TTB officer may require such additional information as deemed necessary to determine whether the applicant is entitled to a permit under this subpart. The applicant shall, when required by the appropriate TTB officer, furnish as a part of the application for the permit such additional information as may be necessary for the appropriate TTB officer to determine whether the applicant is entitled to a permit.

§ 40.498 Investigation of applicant.

Appropriate TTB officers may inquire or investigate to verify the information in connection with an application for a permit. The investigation will ascertain whether the applicant is eligible for a permit. A permit may be denied if the applicant (including, in the case of a corporation, any officer, director, or principal stockholder and, in the case of a partnership, a partner)—

(a) Is, by reason of his business experience, financial standing, or trade connections or by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with this chapter;

(b) Has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes; or

(c) Has failed to disclose any material information required or made any material false statement in the application therefor.

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§ 40.499 Notice of contemplated disapproval.

If the appropriate TTB officer has reason to believe that the applicant is not entitled to a permit, the appropriate TTB officer will promptly give to the applicant notice of the contemplated disapproval of the application and opportunity for hearing thereon in accordance with part 71 of this chapter. If, after such notice and opportunity for hearing, the appropriate TTB officer finds that the applicant is not entitled to a permit, an order will be prepared stating the findings on which the permit request is denied.

§ 40.500 Issuance of permit.

If the application for permit, together with the supporting documents, required under this part is approved, the appropriate TTB officer will issue a permit on TTB F 5200.28 to the applicant as a manufacturer of processed tobacco.

§ 40.501 Retention of permit and supporting documents.

The manufacturer must retain the permit, together with the copy of the application and supporting documents returned with the permit, at the same place where the records required by this subpart are kept. The permit and supporting documents must be made available for inspection by any appropriate TTB officer upon request.

QUALIFICATION REQUIREMENTS FOR MANUFACTURERS OF PROCESSED TOBACCO

§ 40.502 Factory premises.

(a) *General.* The premises used by a manufacturer of processed tobacco to conduct such business must be described on its permit and such premises must include any physical location or building used for: Manufacturing and storing processed tobacco; storing materials, equipment, and supplies related to or used in the manufacturing and storage of processed tobacco; and carrying on activities in connection with the manufacturing and storage of processed tobacco. The premises may consist of more than one building, or portions of buildings, which need not be contiguous or located in the same city, town, village, or State. The manufac-

turer must designate a central location as a repository for the records required under this subpart. The application for the permit filed under § 40.492 must describe the buildings or portions of buildings by street address (number, street, city or equivalent, and State). The permit application must include a diagram, in duplicate, showing the following information, if applicable:

(1) The identification of each building by a letter, number, or similar designation if the factory is in more than one building and each building is not identifiable by a separate street address; and

(2) The particular floor or floors, or room or rooms, comprising the factory if the factory consists of, or includes, a portion of a building or portions of buildings.

(b) *Permits issued prior to June 21, 2012.* A manufacturer of processed tobacco operating under a permit issued prior to June 21, 2012, must submit the information required under paragraph (a) of this section within 180 days after June 21, 2012.

(c) *Extension or curtailment of factory.* If a manufacturer of processed tobacco wishes to change the premises delineated by its permit to an extent that would be inconsistent with the description or diagram of the premises that was submitted with the manufacturer's last permit application, the manufacturer must submit an application on TTB Form 5200.16 for, and obtain, an amended permit before the change in the premises occurs. The application must describe the proposed change in the premises and must be accompanied by a new diagram if required under paragraph (a) of this section.

[T.D. TTB-104, 77 FR 37303, June 21, 2012]

CHANGES AFTER QUALIFICATION

§ 40.511 Change in name.

(a) *Change in individual name.* When there is a change in the name of an individual operating under a permit as a manufacturer of processed tobacco, the manufacturer must, within 30 days of such change, make application on TTB F 5200.16 for an amended permit.

(b) *Change in trade name.* When there is a change in a trade name used by a manufacturer of processed tobacco in

connection with operations authorized by the permit, the manufacturer must, within 30 days of such change, make application on TTB F 5200.16 for an amended permit to reflect such change. This requirement also applies to the addition or discontinuance of a trade name. The manufacturer must also furnish a true copy of any new trade name certificate or document issued to the manufacturer, or statement in lieu thereof, required by § 40.496.

(c) *Change in corporate name.* When there is a change in the corporate name of a manufacturer of processed tobacco, the manufacturer must, within 30 days of such change, make application on TTB F 5200.16 for an amended permit. The manufacturer must also furnish such documents as may be necessary to establish that the corporate name has been changed.

§ 40.512 Change in ownership or control.

(a) *Fiduciary successor.* If an administrator, executor, receiver, trustee, assignee, or other fiduciary is to take over the business of a manufacturer of processed tobacco as a continuing operation, such fiduciary shall, before commencing operations, make application for a permit in accordance with this subpart, furnish certified copies, in duplicate, of the order of the court, or other pertinent documents, showing his appointment and qualification as such fiduciary, and make a commencing inventory in accordance with § 40.523. However, where a fiduciary intends only to liquidate the business, qualification as a manufacturer of processed tobacco will not be required if such fiduciary promptly files with the appropriate TTB officer a written statement to that effect, in duplicate.

(b) *Transfer of ownership.* If a transfer in ownership of the business of a manufacturer of processed tobacco (including a change of any member of a partnership or association) is to be made, such manufacturer shall give notice, in writing, to the appropriate TTB officer, naming the proposed successor and the desired effective date of the transfer. The proposed successor shall, before commencing operations, qualify as a manufacturer of processed tobacco in accordance with this subpart. The

manufacturer shall give notice of the transfer, and the proposed successor shall make application for permit, in ample time for examination and approval thereof before the desired date of such change. The predecessor shall make a concluding inventory and concluding report, in accordance with §§ 40.523 and 40.522, respectively, and surrender the permit with such inventory and report. The successor shall make a commencing inventory and first report, in accordance with §§ 40.523 and 40.522, respectively.

(c) *Change in officers, directors, or stockholders of a corporation.* Upon election or appointment (excluding successive reelection or reappointment) of any officer or director of a corporation operating the business of a manufacturer of processed tobacco, or upon any occurrence that results in a person acquiring ownership or control of more than ten percent in aggregate of the outstanding stock of such corporation, the manufacturer shall, within 30 days of such action, so notify the appropriate TTB officer in writing, giving the identity of such person. When there is any change in the authority furnished under § 40.494 for officers to act in behalf of the corporation, the manufacturer shall immediately so notify the appropriate TTB officer in writing.

(d) *Change in control of corporation.* When the issuance, sale, or transfer of the stock of a corporation operating as a manufacturer of processed tobacco results in a change in the identity of the principal stockholders exercising actual or legal control of the operations of the corporation, the corporate manufacturer shall, within 30 days after the change occurs, make application on TTB F 5200.3 for a new permit. Otherwise, the present permit shall be automatically terminated at the expiration of such 30-day period, and the manufacturer shall dispose of all processed tobacco on hand, make a concluding inventory and concluding report, in accordance with the provisions of §§ 40.523 and 40.522, respectively, and surrender the permit with such inventory and report. If the application for a new permit is timely made, the present permit shall continue in effect pending final action with respect to such application.

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§ 40.513 Change in location or address of factory.

Whenever a manufacturer of processed tobacco intends to relocate its factory, the manufacturer shall, before commencing operations at the new location, make application on TTB F 5200.16 for, and obtain, an amended permit. Whenever any change occurs in the address, but not the location, of the factory of a manufacturer of processed tobacco as a result of action of local authorities, the manufacturer shall, within 30 days of such change, make application on TTB F 5200.16 for an amended permit.

[T.D. TTB–78, 74 FR 29410, June 22, 2009, as amended by T.D. TTB–80, 74 FR 37552, July 29, 2009]

OPERATIONS BY MANUFACTURERS OF PROCESSED TOBACCO

§ 40.521 Record of tobacco and processed tobacco.

(a) Every manufacturer of processed tobacco and every manufacturer of tobacco products required to obtain authorization to engage in another business within the factory under §§ 40.47(b) and 40.72(b) of this part must keep records of operations and transactions that show the total quantity of all:

(1) Processed tobacco on hand at the beginning of each month;

(2) In the case of a manufacturer of tobacco products, processed tobacco used in the manufacture of tobacco products during each month;

(3) Processed tobacco received, together with the date of receipt and the name and address of the person from whom it was received;

(4) Processed tobacco removed from the factory for shipment to a person holding a TTB permit as a manufacturer of processed tobacco, as a manufacturer of tobacco products, as an importer of processed tobacco, or as an export warehouse proprietor, together with the date of removal and the name and address of the person to whom shipped or delivered;

(5) Processed tobacco removed from the factory for shipment, other than for export, to a person not holding a TTB permit as a manufacturer of processed tobacco, as a manufacturer of tobacco products, as an importer of proc-

essed tobacco, or as an export warehouse proprietor, together with the date of removal;

(6) Processed tobacco removed from the factory for export, together with the date of removal;

(7) Processed tobacco removed for any purpose not referred to in paragraphs (a)(4), (5), (6), and (7) of this section, together with the date of removal;

(8) Processed tobacco lost, together with the date and other circumstances of the loss;

(9) Processed tobacco destroyed (either on factory premise or removed from factory premises for destruction), together with the date and other circumstances of the destruction;

(10) Processed tobacco transferred between buildings that are covered under the same permit but that are not located in the same city, town, village, or State; and

(11) Tobacco (unprocessed) on hand at the beginning of each month and used in the manufacture of tobacco products, lost, destroyed, or removed during each month.

(b) Any manufacturer of processed tobacco and any manufacturer of tobacco products that are required to obtain authorization to engage in another business within the factory under §§ 40.47(b) and 40.72(b) and that engage in removals of processed tobacco described in paragraph (a)(5) or (a)(6) of this section must also keep records that show the following information about each such removal:

(1) The full name and business address (including city and State) of the purchaser (if there is a purchaser) and the full name and business address of the recipient, or personal address if the purchaser or recipient is not a business;

(2) The full name, business address (including city and State), and driver's license number of the person picking up the processed tobacco for delivery;

(3) The license number of the vehicle in which the processed tobacco is removed from the manufacturer's premises;

(4) The street address of the destination (not including any in-transit stops) of the processed tobacco; and

(5) The quantity of processed tobacco in the shipment;

(c) The entries in the records of removals required under this section must be made for each day by the close of the business day following the day on which the removal occurs. There is no particular format prescribed for the records required under this section (and commercial records may be used) although the required information must be readily ascertainable from the records kept. In the case of a removal under paragraph (a)(5) or (a)(6) of this section that involves shipment by a common carrier, the appropriate TTB officer may approve an alternate method or procedure pursuant to §§ 40.45 or 40.531 through which the manufacturer may keep records regarding the common carrier and its means of tracking (including pick up and delivery) of the shipment in lieu of the information required by paragraphs (b)(2) and (b)(3) of this section.

[T.D. TTB-104, 77 FR 37303, June 21, 2012]

§ 40.522 Reports.

(a) *General.* Every manufacturer of processed tobacco must prepare a monthly report on TTB F 5250.1 in accordance with the instructions for the form. The report must be prepared at the times specified in this section and must be prepared whether or not any operations or transactions occurred during the period covered by the report. The manufacturer must retain a copy of each report in accordance with the provisions of this subpart.

(b) *First report(s).* The first monthly report must be submitted by the 20th day of the month following the month in which the permit or authorization is issued. If the manufacturer is operating as a manufacturer of processed tobacco under the transitional rule set forth in § 40.493, the manufacturer must submit the first report by the 20th day of the month following the month in which TTB provides written acknowledgement of the receipt of the application filed under § 40.492. In the transitional case, the manufacturer must also submit reports for all previous months back to April 2009. For example, a manufacturer who receives an acknowledgement, dated July 17, 2009, must submit by August 20, 2009, a total

of four reports, one each for April, May, June, and July 2009.

(c) *Reports of no activity.* Reports with the notation “No Activity” must be made for those months in which no activity occurs.

(d) *Reports of removals.* (1) Except as otherwise provided in paragraphs (d)(2) or (d)(3) of this section, a manufacturer who removes processed tobacco for export or for shipment to someone other than a person holding a TTB permit as a manufacturer of processed tobacco, as a manufacturer of tobacco products, as an importer of processed tobacco, or as an export warehouse proprietor must report each such removal on TTB F 5250.2 by the close of the next business day following the day of removal, in accordance with the instructions on the form.

(2) In the case of removals for export, as an alternative to the procedure prescribed in paragraph (d)(1) of this section, the manufacturer may submit to TTB a monthly summary report of such removals in a format approved by the appropriate TTB officer. Prior to the use of such an alternate procedure, the manufacturer must obtain written approval from the appropriate TTB officer.

(3) A manufacturer of tobacco products who removes processed tobacco for any of the purposes related to the manufacture of tobacco products set forth under § 40.72(b)(2) is not required to report such removals on TTB F 5250.2. Records of such removals must still be kept pursuant to § 40.521.

(e) *Concluding report.* A concluding report, covering the period from the first of the month to the date of the concluding inventory, shall be made with such inventory.

(26 U.S.C. 5722)

[T.D. TTB-78, 74 FR 29410, June 22, 2009, as amended by T.D. TTB-80, 74 FR 37552, July 29, 2009; T.D. TTB-104, 77 FR 37304, June 21, 2012]

§ 40.523 Inventories.

Every manufacturer of processed tobacco must provide a true and accurate inventory on TTB F 5210.9 in accordance with instructions for the form. The manufacturer must make such an inventory at the time of commencing business, at the time of transferring

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ownership, at the time of changing location of the factory, at the time of concluding business, and at such other time as any appropriate TTB officer may require. In the case of a manufacturer operating under the transitional rule set forth in §40.493, that manufacturer must make an inventory within 10 days of the date of TTB's written acknowledgement of the receipt of the application filed under §40.492. Each such inventory is subject to verification by the appropriate TTB officer.

(26 U.S.C. 5721)

§ 40.524 Retention of documents.

Every manufacturer of processed tobacco must retain all records and reports required under this subpart, including copies of permits, authorizations, inventories, and reports, for three years following the close of the calendar year in which filed or made, or in the case of an authorization, for three years following the close of the calendar year in which the operation under such authorization is concluded. Such records shall be made available for inspection by the appropriate TTB officer upon request.

(26 U.S.C. 5741)

§ 40.525 Discontinuance of operations.

Every manufacturer of processed tobacco who desires to discontinue operations and close a factory must dispose of all processed tobacco on hand, make a concluding inventory and concluding report, in accordance with the provisions of §§40.523 and 40.522, respectively, and surrender the permit to the appropriate TTB officer.

(26 U.S.C. 5721, 5722)

§ 40.526 Minimum manufacturing and activity requirements.

A permit to manufacture processed tobacco will only be granted to those persons engaged in the processing of tobacco. A permit may be suspended, and subsequently revoked, if the person has no activity under such permit for a period of one year. A person whose permit as a manufacturer of processed tobacco has been revoked for non-use,

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who wishes to engage in such business, must re-apply for such permit.

(26 U.S.C. 5712)

§ 40.527 Authorization to package processed tobacco.

A permit to manufacture processed tobacco does not authorize packaging of processed tobacco. Packaging of processed tobacco may only occur on the bonded premises of a manufacturer of tobacco products.

§ 40.528 Suspension and revocation of permit.

Where the appropriate TTB officer has reason to believe that a manufacturer of processed tobacco has not in good faith complied with the provisions of 26 U.S.C. chapter 52, and regulations thereunder, or with any other provision of 26 U.S.C. with intent to defraud, or has violated any condition of his permit, or has failed to disclose any material information required or made any material false statement in the application for the permit, or is, by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with 26 U.S.C. chapter 52, or has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, the appropriate TTB officer shall issue an order, stating the facts charged, citing such person to show cause why his permit should not be suspended or revoked. Such citation shall be issued and opportunity for hearing afforded in accordance with part 71 of this chapter, which part is applicable to such proceedings. If, after hearing, the hearing examiner, or on appeal, the Administrator, finds that such person has not shown cause why his permit should not be suspended or revoked, such permit shall be suspended for such period as the appropriate TTB officer deems proper or shall be revoked.

[T.D. TTB-78, 74 FR 29410, June 22, 2009, as amended by T.D. TTB-80, 74 FR 37552, July 29, 2009]

OTHER PROVISIONS RELATING TO MANUFACTURERS OF PROCESSED TOBACCO

§ 40.531 Alternate methods or procedures.

(a) *General.* A manufacturer of processed tobacco, on specific approval by the appropriate TTB officer as provided in this section, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this subpart. The appropriate TTB officer may approve an alternate method or procedure, subject to stated conditions, when the appropriate TTB officer finds that—

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and

(3) The alternate method or procedure will not be contrary to any provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of this subpart.

(b) *Application.* A manufacturer of processed tobacco who desires to employ an alternate method or procedure must submit a written application to the appropriate TTB officer. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor. An alternate method or procedure shall not be employed until the application has been approved by the appropriate TTB officer. The manufacturer shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever, in the judgment of the appropriate TTB officer, the effective administration of this part is hindered. Any authorization of the appropriate TTB officer under this section shall be retained as part of the manufacturer's records in accordance with this subpart.

[T.D. TTB-78, 74 FR 29410, June 22, 2009, as amended by T.D. TTB-104, 77 FR 37304, June 21, 2012]

§ 40.532 Emergency variations from requirements.

The appropriate TTB officer may approve methods of operation other than as specified in this subpart, where it is determined that an emergency exists and the proposed variations from the specified requirements are necessary, and provided that the proposed variations will not hinder the effective administration of this subpart and will not be contrary to any provision of law. Variations from requirements granted under this section are conditioned on compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions, and limitations will automatically terminate the authority for such variations, and the manufacturer of processed tobacco thereupon must fully comply with the prescribed requirements of the regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever in the judgment of the appropriate TTB officer the effective administration of this subpart is hindered by the continuation of such variation. Where a manufacturer desires to employ such variation, the manufacturer must submit a written application to do so to the appropriate TTB officer. The application must describe the proposed variations and set forth the reasons therefor. Variations may not be employed until the application has been approved. Any authorization of the appropriate TTB officer under this section shall be retained as part of the manufacturer's records, in accordance with this subpart.

§ 40.533 Penalties and forfeitures.

Anyone who fails to comply with the provisions of this subpart may be liable to the civil and criminal penalties, and forfeitures, provided by law.

§ 40.534 Power of attorney.

If the application for permit or any report or other document required to be executed under this subpart is to be signed by an individual (including one of the partners for a partnership or one of the members of an association) as an attorney in fact for any person, or if an

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individual is to otherwise officially represent such person, power of attorney on TTB F 5000.8 shall be furnished to the appropriate TTB officer. Such power of attorney is not required for persons whose authority is furnished with the corporate documents as required by §40.494. TTB F 5000.8 does not have to be filed again with the appropriate TTB officer where such form has previously been submitted to that appropriate TTB officer and is still in effect.

PART 41—IMPORTATION OF TOBACCO PRODUCTS, CIGARETTE PAPERS AND TUBES, AND PROCESSED TOBACCO

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